This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

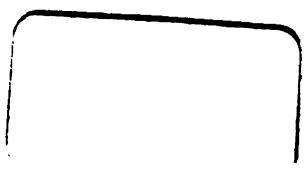
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`



CV
ACT

MOTOR VEHICLE TRANSPORTATION

THE DEVELOPMENT OF THE AUTOMOBILE AS A TRANSPORTATION AGENCY, TOGETHER WITH THE SUPERVISING POLICIES AND PRACTICES ADOPTED IN THE UNITED STATES

BY

HENRY C. SPURR

EDITOR OF PUBLIC UTILITIES REPORTS

PUBLIC UTILITIES REPORTS, INC.

ROCHESTER, N .Y.

308082

Copyright 1922

BY

PUBLIC UTILITIES REPORTS, INCORPORATED.

STANFORD LIBRARY

E. R. ANDREWS PRINTING CO., ROCHESTER, N. Y.

CONTENTS

CHAPTER I.

The contemporary development of the automobile and the existing theory of public supervision 7

CHAPTER II.

Classified review of general rules, regulations, and legislation governing rates, operation, and service 17

CHAPTER III.

State Commission rulings and policies as expounded and applied in actual controversies 135

INTRODUCTION

This volume has been prepared for the purpose of bringing together in convenient form the various rules, regulations, policies, and practices affecting motor vehicle transportation in the United States. The rapid development of the automobile as a public transportation agency and its entrance as a competitor into the field of public service, give rise to problems of interest to all other transportation agencies and to a large group of industries and individuals directly or collaterally affected, as well as to the public in general. It is only necessary to observe the traffic conditions in any of our cities or upon our highways, to appreciate the necessity of a wise and equitable policy of supervision. The fact that the automobile affects the private and business relations of an increasingly large portion of the entire population and has become a necessary factor in our industrial life, gives vital significance to this subject.

The author desires to acknowledge the assistance given him in the preparation of this work by the State Public Service Commissions, the American Electric Railway Association, the National Automobile Chamber of Commerce, Ellsworth Nichols, Esq., Rochester, N. Y., and A. S. Hills, Esq., Washington, D. C.

HENRY C. SPURR.

MOTOR VEHICLE TRANSPORTATION

CHAPTER I.

The Contemporary Development of the Automobile and the Existing Theory of Public Supervision.

The automobile era in this country began in 1895. On September 15th of that year, George B. Selden, a young attorney of Rochester, New York, obtained the first patent for the internal combustion engine, as applied to the propulsion of a vehicle, although he had perfected a working model of a motor vehicle as early as 1877. In 1896 Barnum and Bailey, the famous circus proprietors, announced that they would exhibit throughout the country a horseless carriage. By the end of 1899 there were 5,000 automobiles in operation, 3,700 of which were produced that year. During 1920, more than two million cars, valued in excess of two billions, were manufactured. The registration for the year 1921 showed approximately 10,000,000 motor vehicles in operation. These figures indicate the rapid development and magnitude of the automobile industry in the United States.

At first the motor vehicle was in the class of luxuries, being thought of primarily as a means of conveyance for the rich. So great was the popular demand for the new invention however, that production on a large scale was soon undertaken. Enormous strides were made in methods of manufacture, standardization of equipment, and the perfection of materials so that, within ten years after its introduction, the automobile began to be commonly used by persons of moderate means, although chiefly for

private purposes. During the last ten years, its commercial possibilities have also been extensively promoted, with the result that the motor bus and motor truck have now become recognized agencies for the carriage of persons and property. Thus, within two decades, the automobile has developed from a luxury available only to a few for pleasurable purposes into a vehicle generally employed by nearly all classes of persons both for private and public transportation purposes. In fact the automobile has become a necessity in the domestic and commercial life of the nation.

It should not be forgotten that when the motor propelled vehicle came into existence, the country was divided in opinion as to whether the various agencies furnishing public service, such as light, heat, power, water, gas, telephone and electric traction companies, or in other words, all public utilities commonly thought of as natural monopolies, should be placed under definite state regulation with reference to their rates, service, and general operation, or whether some other form of regulation would be desirable. This question was debated for many years, and finally, following the example afforded by the Railroad Commissions of the different states in the regulation of steam carriers, a general movement was launched for the inclusion of all public utility companies within the state Commission plan of regulation. Beginning in 1907, about twelve years after the advent of the automobile, and during the period of its rapid development, we find in several states, amendments to the Railroad Commission laws extending the jurisdiction of those bodies over all types of public service. Since that time, the new regulatory system has been so generally extended that today in every state except Delaware, there is a public service or other Commission having control over some of the operations of certain utilities. In many states the Commissions have regulatory powers over practically all of the operations of all public service agencies.

The automobile industry in this country has, therefore, grown up and developed contemporaneously with the growth and development of the system of utility regulation now in force. Accordingly, it is not surprising to find that when the motor vehicle took its place in the transportation field, first, as the jitney, and

later, as the bus and truck transporting both persons and property for hire, it was recognized as a public utility and placed under public supervision. In fact the automobile, as now operated for hire, has all the attributes of a public service, and in legal phraseology would clearly be classed at common law as a "common carrier." Consequently, it is only logical that the city authorities should have passed ordinances regulating its operation, or that the state Commissions in many states should have extended their jurisdiction to control its rates and service, or that regulatory legislation should have been passed by state legislatures, either directly affecting this new public service, or placing it under the supervision of the existing state Commission.

While we are not here concerned with privately operated automobiles, it may be said in passing that even these have been placed under certain restrictions. The owners are obliged to secure operators' licenses and are bound to respect numerous requirements as to lights, tags, speed, signals, and general use of the streets and highways. It is about the automobile used for the transportation of persons and property for hire, that the important problems of public regulation are arising, and our investigation is directed only into that field.

It is apparent from the foregoing, that the general employment of the automobile for the transportation of persons and property for hire has brought it naturally within the field of industry affected with a public interest. All of the earmarks of a public calling are present. The operators who offer their transportation services for hire to all who apply, thus classify themselves as common carriers by immemorial custom. It cannot be said, therefore, that the regulation of the operations of the automobile carriers, whether by city ordinances, state laws, or State Public Service Commissions, indicates any degree of antagonism toward the industry or an effort to hamper it or to impose upon it any unjust burden. There have been, however, many arguments advanced in an effort to show that carriers by automobile should not be subject to state regulation. These arguments are summarized in a pamphlet entitled "State Regulation of Motor Vehicle Common Carriers" issued in 1922 by the Motor Vehicle Conference Committee, affiliated with the

National Automobile Chamber of Commerce, New York City, and are as follows:

Opponents of state regulation maintain:

"(1) That granted motor transportation for hire is a public utility, public interest can best be served by unrestricted competition and complete freedom from regulation in which none but the fittest can survive. This policy they contend will yield to passengers and shippers the maximum of results with the minimum cost.

"They deny any analogy between motor vehicle common carriers and railroad and trolley transportation agencies, pointing out that the latter by virtue of private ownership of franchises, rights of way, road beds, tracks and terminals have an exclusive and monopolistic control over all transportation on their routes. Motor truck operators, on the other hand, even where granted a monopoly of transportation for hire over a certain prescribed highway or portion thereof cannot deny the use of that highway to others who wish for themselves or as private carriers to transport persons or property over those same routes.

"Finally, they point out that governmental regulation of rail and trolley common carriers came after these agencies had abused their rights and privileges and through pools, stifling of competition, exorbitant increase of rates, discrimination, stock watering, etc., made it necessary for the public in self-protection to subject them to control. By the very nature of the service, these evils are impossible with motor transportation, since the road is free to the use of everyone and motor vehicles, the medium for transportation over the roads, are quickly, cheaply and in unlimited numbers available for everyone.

"(2) Since the obvious outcome of the first argument advanced against state regulation is "cut-throat" competition between various forms of transportation attempting to serve a certain territory and per se between the motor transportation companies themselves operating in competition over certain highway routes, the opponents of state regulation cannot escape the query whether they are willing to face the logical consequences of such a struggle. Without hesitation they answer that wherever rail, trolley or any other form of transportation for hire cannot stand up before a newer and better form, public interest demands that it

should give way; likewise within that newer and better form of transportation, the rule should be survival of none but the most efficient and economical agencies. They are confident that even though such a policy may mean the destruction at times of more or less invested capital, as it did when rail and inland water transportation first came into acute competition, the final economic benefits to the community as a whole will many times compensate for the loss involved.

"(3) As for shouldering upon motor transportation for hire financial and other burdens which it should rightly carry, opponents of state regulation say that legislative bodies have not heretofore found it necessary to establish such control in order to determine the weight limits for motor vehicles used as common carriers; their registration fees and other charges; their liability to the public for injury to persons or damage to property; etc. If this is all that is involved, it is not sufficient to warrant almost unlimited regulation in all other respects by a state agency.

"(4) Lastly, those against state regulation believe that the natural working out of economic laws will do more to stabilize the motor transportation for hire business than extensive interference on the part of governmental agencies of any sort. They feel that the proposition is paternalistic and will result either in discrimination in favor of one or more types of transportation, and against all the rest, or else that it will promote monopolistic advantages for certain motor transportation companies and that through it all the traveling and shipping public will pay the cost."

Along the same line, is a statement of the Governor of Wisconsin in a report accompanying his veto of a measure passed by the Wisconsin legislature for the regulation of motor vehicles. The Governor says:

"My objection to this bill is fundamental. Jitneys and busses may be operated by anyone upon the public highways and streets, and therefore there is no opportunity to create a monopoly. Free competition prevails, and thus rates and services are regulated by the natural law of competition. It is quite different with respect to a street railway, an interurban railway, or a railroad. When either of those occupies a territory, there is no opportunity for a competitive, like system to come into that territory. There is a limitation on the number of street railways or inter-

urban lines that may occupy the field for transportation, and so the transportation companies hold the field against all others; and the reason for regulating them is because of the fact that they possess monopoly, affording them the right, in the absence of regulation, to arbitrarily discriminate, grant rebates and other special favors, charge an excessive fare, and give inadequate service. The legislature, therefore, wisely provided for the regulation of such monopolies. The motor vehicles have come to stay; they are the beginning of a transportation system about which it is dangerous to prophesy. They may in the future be displaced by more modern systems of transportation. The old canal companies fought for their existence when the railroads came, but the building of railroads could not be obstructed merely for the purpose of preserving the canal companies. To what extent transportation by motor will displace other forms of transportation, I need not discuss, but I do not believe that it is any part of the state's duty to obstruct or hinder that means of conveyance. So long as the motor vehicles do not possess a monopoly, there is no ground for regulating them, except to protect the safety and health of the traveling public. To regulate them from the standpoint of protecting some other business, is to interfere with free competition, not in the interests of the general public, but for the special protection of some specific business."

On the other hand, the arguments in favor of state regulation of automobile carriers, also summarized in the pamphlet of the Motor Vehicle Conference Committee above referred to, are worthy of consideration. Those who contend for state regulation say it is necessary:

"(1) Because motor transportation for hire is a public utility and as such should be regulated along with other public vehicles, so that travellers and shippers by such means can be made sure of safe, prompt, regular, adequate, efficient and economical service.

"(2) So that, in all cases where motor vehicle common carriers come, or are likely to come, into ruinous competition with other common carriers, the state can step in and determine whether public convenience and necessity require such competition, and save, if desirable, the pre-existing agencies of transportation.

"(3) In order to shoulder upon the motor vehicle common carrier obligations, financial and otherwise, in return for the rights given it to operate for a profit over all or certain highways within a state, especially so since the highways are built and maintained by the public. In some cases, these rights take the form of valuable franchises which virtually grant monopolistic privileges over certain routes.

"(4) For the purpose of eliminating the irresponsible, so-called 'fly-by-night' companies and individuals who, while undergoing certain destruction for themselves, pull down with the ruin well managed motor transportation agencies which render a real public service and are entitled to a reasonable return on their investments and a stabilization of their business."

Whatever the arguments pro and con, it must be recognized that state regulation of the automobile carrier is already well established in many jurisdictions, but not in all.

Perhaps it should be stated at this point that regulation by public authorities was inaugurated in this country for the purpose of protecting the people against unreasonable rates and discriminatory practices that could not otherwise be controlled under circumstances of monopoly in the public service. For that reason the steam railroads of the country were placed under the Interstate Commerce Commission in 1887. For the same reason, the various public service corporations operating in the different cities have been placed under the regulation of State Public Service Commissions. In a few instances, Municipal Public Service Commissions have been established with the like objects in view. Therefore, it may be well argued that when monopolistic conditions which public regulation was established to control, disappear and are replaced by competitive conditions, public regulation should either cease or should embrace all of the competitors and their operations. The automobile has introduced competition into the entire field of transportation, both between automobile lines, electric railways, steam railroads, and all other similar agencies. It is not economical, practical, or sound that one form of transportation, while in active competition with another, should be burdened with the exactions of public regulation as to its rates, the character of its service, the upkeep of its equipment, its accounting methods, its obligations to maintain

certain portions of the highways, etc., while the other transportation agency operates without any such restrictions and without any of the obligations imposed by regulation. If the jitney or motor bus or truck is not regulated, it cannot be said that the street railway operating in the same territory enjoys monopolistic conditions. If, therefore, a condition of true competition has been created in the field of transportation by the advent of the automobile, that great economic factor—competition—might perhaps be permitted to determine the destinies of existing transportation facilities and each agency allowed complete freedom from any regulation whatsoever; but if a policy of regulation is to be adopted, all of the transportation agencies should be brought under it and their destinies determined under conditions of equity, which will mete out to each its just portion of the burdens, restrictions, and advantages.

State regulation of automobile carriers will, of course, afford them the same protection that is accorded other utilities, namely, the recognition of their respective rights against competition in localities where they have become established, rates that should yield a fair return upon their investment, stabilization of their financial conditions by requiring proper accounting methods, etc. Just regulation offers advantages to the carriers as well as to the public.

As before indicated, the prevailing view in this country appears to be in favor of direct regulation by state laws, state Commissions and municipalities, rather than by competition. Already we find that regulatory action by direct legislation or otherwise has been attempted or made effective in the following jurisdictions: Arizona, California, Connecticut, District of Columbia, Georgia, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Utah, Virginia, West Virginia, Wisconsin.

In the following states, the regulatory Boards or Commissions have acted or endeavored to act under powers directly conferred or assumed: Arizona, California, Connecticut, District of Columbia, Georgia, Idaho,* Illinois, Maine, Maryland, Nebraska,

*Note.—Law declared unconstitutional.

Nevada, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Utah, West Virginia, and Wisconsin.

Regulation by the municipalities exists in some form in practically all states.

The scope of regulation by existing statutes is indicated by the variety of subjects mentioned for supervision, which include: qualifications of drivers, licenses, service requirements, sanitation, certificates of convenience and necessity, bonds for good faith, maintenance of brakes, use of chains, accounting methods, discontinuance of service, insurance and indemnity, use of intoxicating liquor, loading standards, markers and signs, preferences or rebates, railroad crossings, reports to regulating authority, routes, safety rules, sale or transfer of property, maintenance of schedules, standards of service, soliciting of passengers, regulation of speed, speedometers, use of tobacco, trailers, valuation of property, reporting of accidents, agreements with other utilities, securing municipal authority, compensation for wear and tear of pavements, transportation of explosives, maintenance of equipment, interruption of service, issuance of stocks and bonds, lights, lost articles, means of egress, obligation to carry passengers, operating regulations, penalties, rates and tariffs, reports to Commissions, stops, substitute motor vehicles, issuance of tickets, provisions regarding tires.

A classified review of the various requirements now effective is set forth in Chapter II. The rulings and policies of the state Commissions as applied in actual controversies are given in Chapter III. Many subjects not specifically included in the statutes or in the general rules and regulations of the Commissions are thus expounded. Chapters II and III therefore furnish a complete exposition of state and Commission policy and practice, as applied to the supervision of this new transportation agency.

No effort has been made in this volume to cover the numerous municipal regulatory ordinances and the multifarious local police regulations which have to do with safety of operation, routing, etc., but which add nothing in principle that is not fully covered by the statutory and Commission regulations. In fact, much of municipal regulation has now been superseded by State Commission regulation. There is as yet no Federal regulation of

automobile carriers, although some of their routes cross state lines.

As has been pointed out, all classes of automobiles, whether used for private or public purposes are under some sort of regulation; but up to the present time, Commission supervision in most states has been limited to those engaged in the carriage of persons or property for hire over designated routes, between fixed termini on regular schedules. Taxicab operators, while not operating over designated routes or between fixed termini, are nevertheless carriers for hire, and as such are subject to municipal supervision in all states, including even the regulation of their fares, in some instances. In several states, taxicabs as well as other motor transportation vehicles are under the supervision of state Commissions, either by special legislative action or because the Commission has been given jurisdiction over all common carriers.

In conclusion, it is clear that the development of automobile transportation as a public service, along with the present policy of state regulation of public utilities, has resulted logically in the inclusion of this new means of conveyance within the regulatory sphere in a considerable portion of the country. Whether the automobile has introduced a competitive condition which should not be subject to public regulation has given rise to a conflict of opinion, but whether competition is suffered to flourish without restraint by governmental agencies or not, it would seem to be only fair that all competing transportation agencies be treated alike and the destinies of each worked out with equity and justice, both to the proprietors and the public, under one theory or the other—either free competition without any regulation whatsoever, except as to matters of safety, etc.; or else public regulation which will subject each agency to the same relative burdens and responsibilities, and afford each the same benefits and opportunities.

CHAPTER II.

CLASSIFIED REVIEW OF GENERAL RULES, REGULATIONS, AND LEGISLATION GOVERNING RATES, OPERATION, AND SERVICE.

I. Introduction, 19.

II. The right to regulate, 19.

III. Definitions, 26.

IV. Automobile operators as common carriers or public utilities, 29.

V. Jurisdiction of Commissions:

a. In general, 35.

b. Rules and regulations, 41.

VI. Jurisdiction of courts, 42.

VII. Powers of municipalities, 42.

VIII. Conditions precedent to operation:

a. In general, 45.

b. Certificates of convenience and necessity:

1. Necessity for, 46.

2. Application for, 50.

3. Form of certificate, 54.

4. Scope of certificate, 55.

5. Limitation of certificate, 55.

6. Display of certificate, 56.

7. Term of certificate, 57.

8. Transfer of certificate, 58.

9. Suspension, forfeiture, or revocation of certificate, 59.

c. Local franchises, permits, or licenses, 62.

d. Physical condition, 65.

e. Equipment, 66.

f. Indemnity bonds and insurance, 69.

g. Signs and marks of identification, 78.

IX. Grounds for granting and refusing certificates of convenience and necessity:

a. In general, 80.

b. Competition with street railways, 81.

IX.—continued.

c. Competition with steam railroads, 88.

d. Competition between automobiles, 89.

X. Classification of cars and service:

a. In general, 93.

b. Taxicab or "for rent" service, 93.

c. Motor bus operation by railroads, 96.

XI. Ownership of cars, 97.

XII. Operation of cars:

a. In general, 97.

b. Duty to operate or serve, 99.

c. Safety of operation:

1. In general, 100.

2. Use of trailers, 105.

3. Carriage of dangerous substances, 105.

4. Qualification of chauffeurs, 106.

5. Capacity and loading, 108.

d. Health and comfort of passengers, 112.

XIII. Return, 113.

XIV. Routes, 114.

XV. Rates and schedules:

a. In general, 116.

b. Tickets, 119.

c. Time schedules, 120.

d. Through routes and joint rates, 122.

XVI. Changes in rates, schedules, tariffs, or service, 122.

XVII. Security issues, 124.

XVIII. Depreciation, 124.

XIX. Discrimination, 125.

XX. Valuation, 126.

XXI. Accounts, reports, and statements:

a. In general, 126.

b. Reports of accidents, 127.

XXII. Penal provisions, 130.

XXIII. Claims and suits, 132.

XXIV. Injunction, 133.

XXV. Estoppel, 133.

XXVI. Appeal, 133.

XXVII. Interstate commerce, 133.

I. Introduction.

Automobile transportation of both passengers and freight has grown so rapidly in the last few years that its regulation has become of considerable importance in many of the states, although in some parts of the United States automobile carriers have not yet come under Commission jurisdiction, such regulation as has been attempted having been left in the hands of the local authorities. The jitney, the motor bus, and the motor truck have entered the transportation field as competitors of the railroads, for the business of both developed and undeveloped territory. It has, therefore, been found necessary to subject these vehicles to the same kind of regulation as that under which the railroads are placed. Motor transportation, therefore, will, without doubt, soon come within the jurisdiction of Public Service Commissions of every state in the country.

Many questions, with reference to this new type of carrier, have arisen and been decided, rules as to operation and service have been adopted, and Commission policy as to competition between these carriers themselves, or between automobiles and railroads, has been declared. These precedents will furnish an invaluable guide to those interested in this subject. In considering the rulings in various states, however, care must be taken to note the language of the statute upon which a decision is grounded, because precedents, established in sister states in regard to Commission jurisdiction over automobile transportation, are of little aid in determining a question which has arisen when the statutes conferring jurisdiction are dissimilar.[1]

II. The right to regulate.

Regulation of automobile transportation may be directly by the state, through an act of the legislature; or indirectly, through municipalities or Public Service Commissions, to whom the power to regulate has been delegated by the state, or partially by the state and partially by the municipality or Commission, or both. The right of the state to regulate, either directly or indirectly, through the agencies mentioned, is well established.

The early "jitney" ordinances were assailed on various con-

[1] Western Asso. v. Hackett (Cal.) P.U.R.1915F, 997.

stitutional grounds but they withstood these attacks. There can be no question but that regulation of this kind of traffic, like that of other forms of transportation, is a valid exercise of the police power.[2] So a jitney ordinance requiring a license fee of $10 has been held authorized by charter power to enact and enforce ordinances necessary to protect health, life, and property, to prevent and remove nuisances, to preserve and enforce good government, order, and security, and to have and enjoy general police powers.[3]

One of the reasons urged against such regulation was that it discriminated against the jitney in favor of taxicabs and other vehicles, and also to the advantage of the street railways. The main constitutional ground for the attack was that this constituted class legislation; but this objection was not sustained.[4] Singling out vehicles, commonly known as "jitney busses," for regulation, licensing, bonding, and taxation is permissible.[5] Ordinances regulating jitneys are not invalid merely because they impose regulations upon operators of jitney busses not required of taxicabs, street railways, or other vehicles.[6] Ordinances requiring a jitney operator to procure an indemnity policy while street car companies and drivers of ordinary hacks and automobiles are not required to do so, have been held not discriminatory.[7] And ordinances requiring every jitney operator to give a bond to pay judgments for damages resulting from negligent operation, while no bond is required of other public motor vehicles or street cars, have also been held not discriminatory class legislation, in restraint of trade, or in denial of the equal

[2] Memphis v. State ex rel. Ryals, 133 Tenn. 83, P.U.R.1916A, 825, 179 S. W. 631. Citing Ex parte Dickey, 76 W. Va. 576, P.U.R.1915E, 93, 85 S. E. 781.

[3] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[4] Green v. San Antonio, — Tex. Civ. App. —, 178 S. W. 6.

[5] Ex parte Dickey, 76 W. Va. 576, P.U.R.1915E, 93, 85 S. E. 781.

[6] Thielke v. Albee, 79 Or. 48, P.U.R.1916D, 6, 153 Pac. 793; Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685; Huston v. Des Moines, 176 Iowa 455, P.U.R.1916D, 7, 156 N. W. 883; Cummins v. Jones, 79 Or. 276, P.U.R.1916D, 7, 155 Pac. 171.

[7] Ex parte Sullivan, 77 Tex. Crim. Rep. 72, P.U.R.1915E, 441, 178 S. W. 537; Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R. 1916C, 565, 182 S. W. 685.

protection of the law.[8] There is a substantial difference between them. Greater danger may be caused the public by the operation of jitneys or motor busses continuously through the day in crowded highways, without limitation as to the streets over which they may operate, than from the operation of taxicabs which are required to occupy a fixed place on stand when not in operation, and which, when carrying passengers, do not ordinarily run over streets on which the heaviest traffic exists.[9] Automobile carriers must operate over definite routes upon regular schedules and charges. Taxicabs, hacks, drays, and other light motor carriers, have no definite routes or charges, practically every service rendered by them being a special service rendered to an individual or individuals, and the vehicle, for the time, being exclusively for his use, and without his consent no one else having the right to enter it.[10] While the jitney and taxicab are physically the same, the services they perform are materially different. The service of the jitney is designed to accommodate persons traveling along distinct routes, and at a rate of fare common to all; but the service of the taxicab is intended for the accommodation of persons whose destinations involve varying distances and lines of travel and presumably at varying prices. The equal protection of the law, therefore, does not take from the state the right to classify and regulate automobiles engaged in transportation as common carriers.[11]

There is also a substantial distinction between the street railway and automobile transportation, so as not to require like laws to apply to each. The street railway consists of a fixed plant, including rolling stock, which is operated only along tracks, while the automobile is more or less fugitive in character, being operated on any portion of the surfacing of an ordinary highway. It results that the street railway property is in its nature an indemnity against the consequences of negligence,

[8] Willis v. Ft. Smith, 121 Ark. 606, P.U.R.1916D, 7, 182 S. W. 275; Memphis v. State ex rel. Ryals, 133 Tenn. 83, P.U.R.1916A, 825, 179 S. W. 631.

[9] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[10] Smith v. Nunnelly (W. Va.) P.U.R.1915E, 177.

[11] Nolen v. Riechman (D. C.) 225 Fed. 812; Philadelphia Jitney Asso. v. Blankenburg (Pa.) P.U.R.1916D, 7.

and so, at least, an equivalent for the bond of indemnity required of the jitney or motor bus.[12] It has been held that the imposition of a tax of 5 per cent on the gross receipts of the operators of jitney busses when no such tax is imposed upon the operators of other vehicles, is not such an unjust discrimination as to deprive the owners of jitneys of the equal protection of the laws;[13] and that an ordinance requiring a license fee of $10 for jitneys, while taxicabs and other rented cars pay only $3, and a street railway pays nothing, and that requires the execution of a bond to pay damages arising from wrongful operation, while none is required of taxicabs, other rent cars, and the street railway, is not obnoxious to the constitutional guaranty of equal rights.[14]

A statute regulating the operation of jitney busses has been upheld notwithstanding that it exempts from its provisions carriers of United States mail.[15] And an ordinance discriminating against aliens by refusing them licenses to run jitneys has been held constitutional.[16] But an Idaho statute providing that: "Every . . . person . . . owning, controlling, managing, operating, driving, or causing to be operated or driven, or holding out by sign, voice or other device or by advertisement that they will drive, operate or cause to be driven or operated over any particular route or routes or over any route or routes or between specified termini for hire or compensation any automobile, auto stage, motor vehicle or motor truck or any other self-propelled motor vehicle for use in the business of carrying either passengers or freight or both, excepting such as run on rails or tracks not hereinbefore enumerated, and automobiles used exclusively as hearses, ambulances, hotel busses operating solely between hotel and trains, or automobiles or auto trucks used for carrying United States mails on star routes when actually engaged in carrying such mail . . ." was declared unconstitutional by the Idaho supreme court, on the ground that it per-

[12] Nolen v. Riechman (D. C.) 225 Fed. 812.

[13] West v. Asbury Park, 89 N. J. L. 402, 99 Atl. 190.

[14] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[15] State v. Ferry Line Auto Bus Co. 93 Wash. 614, 161 Pac. 467; State v. Seattle Taxicab & Transfer Co. 90 Wash. 416, 156 Pac. 837.

[16] Morin v. Nunan, 91 N. J. L. 506, 103 Atl. 378.

mitted hotel busses and other automobiles to engage in the common carriage of freight and passengers as well as in their other business, and was, therefore, discriminatory.[17]

In a case arising in the city of Dallas, it was claimed that an ordinance prohibiting the operation of jitneys was illegal because it resulted in creating a monopoly in favor of a street railway in violation of the provisions of the Texas Constitution forbidding monopolies. The court of civil appeals, however, held otherwise. In the opinion of the court, the mere refusal of a municipality to grant a franchise or permission to others who desired to compete with those already in possession of a franchise or permit, does not create a monopoly.[18] In an earlier case it was held that an ordinance restricting the operation of jitneys, that does not disclose on its face the creation of a monopoly in favor of street cars, taxicabs, or other rent cars, does not violate the antimonopoly provision of the Constitution.[19]

Attempts have also been made, without success, to upset "jitney" ordinances on various other constitutional grounds. It has been held that the right to operate a jitney bus is not such a right as is protected by treaty with a foreign nation; as the rights of property, protected by treaty, are such as are capable of sale or transfer and are not such as are purely personal;[20] that an operator of a jitney bus is not deprived of any constitutional privileges because of the fact that by reason of his financial condition he is unable to comply with the reasonable terms of an ordinance regulating the jitney business;[21] that the fact that jitney operators cannot pay the large premium demanded on bonds, required by ordinance, to pay damages arising from wrongful operation, or that they will suffer pecuniary injury from the enforcement of the ordinance, does not *per se* establish its invalidity;[22] that a provision of an ordinance requiring those

[17] State v. Crosson et al. (Ida.) 190 Pac. 922.

[18] Gill v. Dallas, — Tex. Civ. App. —, P.U.R.1919C, 700, 209 S. W. 209.

[19] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[20] Lutz v. New Orleans, 235 Fed. 978, affirmed in 237 Fed. 1018, 150 C. C. A. 654.

[21] Ibid.

[22] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

operating any self-propelled vehicles carrying passengers for hire to pay additional licenses of $300 to $400 before being permitted to solicit or receive passengers on the paved portions of certain designated streets, although practically prohibitive as to such designated places, is a valid exercise of municipal control, although the effect of such ordinance, if enforced, would involve a benefit to the street railway company;[23] and that an ordinance which requires the operator of a motor bus upon a public highway to secure a certificate from the Commissioner of Public Utilities before applying for a municipal license is not invalid as vesting such Commissioner with an arbitrary power, where the act provides for an appeal from his action.[24]

The fact that owners of automobiles may have been licensed under state laws, or under former ordinances, to pursue the business in which they are engaged, and that they have made large investments on the faith thereof, does not, it has been held, necessarily render a new ordinance invalid on the theory that it deprives their owners of property without due process of law, since rights, under such licenses, are revoked at will.[25]

An ordinance requiring jitney operators to obtain licenses or execute indemnity bonds has been held not to create a new remedy or deprive the operator of property without due process of law or to conflict with a general act regulating automobiles,[26] and one requiring a license fee has been held not to violate a constitutional provision that property shall not be taken, damaged, or destroyed for public use without adequate compensation.[27]

It has been held that an ordinance forbidding the operation of jitneys within a specified district in a city does not take property without just compensation or without due process of law, although the owners are operating under municipal license; since licenses are revocable at will;[28] and that jitney

[23] Desser v. Wichita, 96 Kan. 820, P.U.R.1916D, 8, 153 Pac. 1194.

[24] Thielke v. Albee, 79 Or. 48, P.U.R.1916D, 6, 153 Pac. 793.

[25] Gill v. Dallas, — Tex. Civ. App. —, P.U.R.1919C, 700, 209 S. W. 209; Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[26] Philadelphia Jitney Asso. v. Blankenburg (Pa.) P.U.R.1916D, 8.

[27] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[28] Gill v. Dallas. — Tex. Civ. App. —, P.U.R.1919C, 700, 209 S. W. 209.

operators cannot complain that an ordinance authorizing the suspension or revocation of a license, on a showing of conviction for a violation of the ordinance, contravenes a constitutional guaranty of due process of law, where they are operating under a prior ordinance containing the same provision.[29]

In Texas, a $50 license fee for each jitney with a seating capacity of five or less, including the driver, has been held not to be invalid on the ground that it was a tax for revenue instead of a license fee.[30]

So an ordinance requiring a jitney operator to pay a license fee of $10 does not conflict with article 8, § 2, of the Texas Constitution providing that occupation taxes shall be equal and uniform upon the same class of subjects, since the fee is not an occupation tax.[31] An operator of a jitney in Texas cannot be heard to complain that a license fee varying from $10 to $30 according to the number of passengers carried in a car is an occupation tax as to the larger fees, where he is in the $10 class, and it does not appear that any jitney within a higher class has ever applied for a license.[32]

An ordinance graduating license fees from $15 to $35 per year, according to the seating capacity of jitneys, is not invalid in Iowa on the ground that the fees are so large as to amount to a revenue measure.[33] Such an ordinance has been held lawful and reasonable in Georgia and Nevada.[34] In Massachusetts, it has been held that a $5 jitney license fee is valid and not a tax on property.[35]

The right to regulate motor or automobile transportation rests in the state, but this power may be delegated to a subordinate

[29] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C 565, 182 S. W. 685.

[30] Ex parte Bogle, 78 Tex. Cr. Rep. 1, 179 S. W. 1193.

[31] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685; Green v. San Antonio, — Tex. Civ. App. —, 178 S. W. 6.

[32] Ex parte Sullivan, 77 Tex. Crim. Rep. 72, P.U.R.1915E, 441, 178 S. W. 537.

[33] Huston v. Des Moines, 176 Iowa 455, P.U.R.1916D, 7, 156 N. W. 883.

[34] Hazleton v. Atlanta, 144 Ga. 775, P.U.R.1916D, 7, 87 S. E. 1043; Ex parte Counts, 39 Nev. 61, 153 Pac. 93.

[35] Commonwealth v. Slocum, 230 Mass. 180, 119 N. E. 687.

agency of the state.[36] The power of classification of motor vehicles for the purpose of administering a motor vehicle law may be properly delegated to a municipality, or to an official, or to a board charged with the administration of the statutes.[37] A municipal ordinance forbidding the operation of jitneys within a specified district in a city cannot be declared void on the theory that this is a usurpation of state authority, since the state delegates such legislative functions to local subdivisions.[38] The legislature may prescribe the number, character, routes, rates, and hours of service of common carrying vehicles on highways, or delegate such power either to a municipal corporation[39] or to a Public Service Commission.[40] It is, therefore, obvious that automobile transportation is of such a nature as to make it subject to state or municipal regulation, whenever this is deemed advisable.

III. Definitions.

In adopting laws or rules for the regulation of automobile transportation, it has been found convenient and advisable to define several terms that are frequently used, such as motor bus, public service motor vehicle, jitney, transportation for hire, public highway, etc. These will be useful as a working basis in framing laws, rules, and regulations in jurisdictions where nothing has as yet been done to bring this type of transportation under public control. Such terms have been defined as follows:

In the Connecticut act, the term "public service motor vehicle" includes all motor vehicles used for the transportation of passengers for hire.[41]

The term "motor vehicle" has been defined by the Arizona Commission to mean "an automobile, an auto stage, a motor bus, or any other self-propelled power vehicle not operated or driven over or upon fixed rails or tracks."[42] The term "motor

[36] Green v. San Antonio, — Tex. Civ. App. —, 178 S. W. 6.

[37] Smith v. State, 130 Md. 482, 100 Atl. 778.

[38] Gill v. Dallas, — Tex. Civ. App. —, P.U.R.1919C, 700, 209 S. W. 209.

[39] Ex parte Dickey, 76 W. Va. 576, P.U.R.1915E, 93, 85 S. E. 781.

[40] Smith v. Nunnelly (W. Va.) P.U.R.1915E, 177.

[41] Section 1 of Connecticut Act Concerning Public Service Motor Vehicles Operating Over Fixed Routes (1921).

[42] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52.

vehicles" as used in the Utah Rules and Regulations Governing Automobile Stage Lines, includes any automobile, auto stage, motor bus, motor truck, or other self-propelled vehicle owned or operated by an automobile corporation for use in the business of carrying either passengers or freight or both for compensation over established routes within the state, and the rules apply, so far as reasonably applicable in each instance, to all automobile corporations as defined, and to persons, firms, or companies operating or causing same to be operated.[43]

The words "motor bus," under the rules of the Maine Commission, "mean and include any automobile, automobile truck, or trackless motor vehicle engaged in the business of carrying passengers within the state of Maine, which is held out or announced by sign, voice, writing, device, or advertisement to operate or run, or which is intended to be operated or run over a particular street or route, or to any particular or designated point, or between any designated points, zones, or districts."[44] In the District of Columbia, the term "bus" or "motor bus" is deemed to include any motor vehicle operated for the transportation of passengers for hire over a defined route, approved by order of the Public Utilities Commission of the District.[45]

The term "closed bus," or "closed motor bus," is deemed by the Commission to include any motor bus, the body of which is so constructed that it is or may be enclosed entirely with fixed or movable sides or windows.[46] The ordinance of the city of Fort Worth, the validity of which was attacked in the Auto Transit Company case, defined the words "motor bus" as meaning and including "any automobile, automobile truck, or trackless motor vehicle engaged in the business of carrying passengers for hire within the city limits of the city of Fort Worth which is held out or announced by sign, voice, writing, device, or advertisement to operate or run, or which is intended to be oper-

[43] Rules and Regulations Governing Automobile Stage Lines (Utah) I., II., effective January 1, 1918.

[44] Definition 1, Rules and Regulations of the Maine Commission, effective July 9, 1921.

[45] Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, Sept. 1, 1921. Section 1, subdivision (a).

[46] Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, Sept. 1, 1921. Section 1, subdivision (b).

ated or run, over a particular street or route or to any particular or designated point, or between particular points, or to within any designated territory, district, or zone.[47]

Under the Connecticut statutes, the term "jitney" includes any public service motor vehicle operated in whole or in part upon any street or highway in such a manner as to afford a means of transportation similar to that afforded by a street railway company by indiscriminately receiving or discharging passengers; or running on a regular route or over any portion thereof, or between fixed termini.[48] A jitney has been held to be a self-propelled vehicle, other than a street car, traversing the public streets between certain definite points or termini, and as a common carrier conveying passengers at a 5-cent or some small fare, between such termini and intermediate points, and so held out, advertised, or announced.[49]

In Arizona, the term "public highway" means any public street, alley, or road in the state.[50] The word "transportation" means the receipt, carriage, and delivery of passengers and their baggage, for hire, by motor vehicle.[51]

In Washington, the term "auto transportation company" means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any motor propelled vehicle not usually operated on or over rails used in the business of transporting persons, and, or, property for compensation over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town: Provided, that the term "auto transportation company," as used in this act, shall not include corporations or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever, in so far as they

[47] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[48] Section 1 of Connecticut Act Concerning Public Service Motor Vehicles Operating Over Fixed Routes (1921).

[49] Memphis v. State ex rel. Ryals, 133 Tenn. 83, P.U.R.1916A, 825, 179 S. W. 631. The case of Ex parte Cardinal, 170 Cal. 519, P.U.R.1915E, 282, 150 Pac. 348, was cited and approved.

[50] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52.

[51] Ibid.

own, control, operate, or manage taxicabs, hotel busses, school busses, motor propelled vehicles, operated exclusively in transporting agricultural, horticultural, or dairy or other farm products from the point of production to the market, or any other carrier which does not come within the term "auto transportation company" as herein defined.[52]

The term "for hire" has been held to mean a "monetary consideration (usually termed the fare) paid for the occupancy, during a journey, of all the available seating space in a motor vehicle or of any seat or seats therein." [53]

The words "between fixed termini or over a regular route," when used in the Washington statute, mean the termini or route between or over which any auto transportation company usually or ordinarily operates any motor propelled vehicle even though there may be departures from said termini or route, whether such departures be periodic or irregular. Whether or not any motor propelled vehicle is operated by any auto transportation company between fixed termini or over a regular route within the meaning of this act is a question of fact and the finding of the Commission thereon is final.[54]

IV. Automobile operators as common carriers or public utilities.

The question, whether those who are engaged in transportation by automobile are common carriers or public utilities, is often important in determining whether they are subject to regulation by Public Service Commissions. All state Commissions have jurisdiction over common carriers. They were generally given this jurisdiction before automobile transportation was thought of. This does not mean, however, that they have power to regulate all carriers that would be deemed common carriers at common law, because the term "common carrier" is usually defined in these statutes, and the Commission *jurisdiction* limited by this definition. The question *with respect to automobile* carriers would be whether they can be considered as common

[52] Chapter 111 of the Laws of 1921 of Washington, § 1 and Rule 6 of the Rules and Regulations of the Department of Public Works of Washington.

[53] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52.

[54] Rule 6 of § 1 of chapter 111 of the Laws of 1921 of Washington.

carriers within the definition of common carriage in the public utility law of the state in which they are operating. It was early held by the California Commission that a motor bus line, auto truck line, or auto stage line publicly engaged in transporting freight for hire over regular routes on the public highways, is not a public utility under the California Public Utilities Act, and is, therefore, not subject to the jurisdiction of the Commission, although it may be a common carrier.[55]

But the California supreme court reversed the Commission and held that automobile common carriers of freight and passengers, over routes on public highways between cities and other points, are transportation companies and subject to regulation by the California Commission under the provision of the Constitution, article 12, § 22, as amended in 1911, giving the Commission power to regulate railroads and "other transportation companies." [56]

Operators of automobiles for the transportation of the public for hire along fixed routes or wherever passengers desire to go, are deemed common carriers and public service companies within the meaning of the Pennsylvania Public Service Company Law.[57]

Jitneys have been held to be public utilities, within the meaning of the Illinois statutes, giving the Illinois Commission jurisdiction over public utilities.[58]

The Public Utilities Act of Colorado defines the terms "common carrier" and "public utility" as follows:

"The term 'common carrier' when used in this act, includes every railroad, corporation . . . and every other corporation or person affording a means of transportation by automobile or other vehicle whatever, similar to that ordinarily afforded by railroads or street railways and in competition therewith.

[55] Western Asso. v. Hackett (Cal.) P.U.R.1915F, 997; United R. Co. v. Peninsular Rapid Transit Co. (Cal.) P.U.R.1915F, 1012.

[56] Western Asso. v. Railroad Commission, 173 Cal. 802, P.U.R.1917C, 178, 162 Pac. 391.

[57] Allegheny Valley Street R. Co. v. Greco (Pa.) P.U.R.1917A, 723; Scranton R. Co. v. Wilson (Pa.) P.U.R.1916D, 25; Scranton R. Co. v. Owens (Pa.) P.U.R.1916D, 25; Scranton R. Co. v. Walsh (Pa.) P.U.R. 1916D, 18.

[58] Jacksonville R. Co. v. O'Donnell (Ill.) P.U.R.1915C, 853; Baker v. Snyder (Ill.) P.U.R.1916D, 4; Tri City R. Co. v. Dietz (Ill.) P.U.R.1916D, 4; Quincy R. Co. v. Snyder (Ill.) P.U.R.1916D, 4.

"The term 'public utility' when used in this act, includes every common carrier . . . and each thereof is hereby declared to be a public utility, and to be subject to the jurisdiction, control and regulation of the Commission and to the provisions of this Act." [59]

In Connecticut, "every person, association, or corporation owning or operating a jitney," is declared to be a common carrier, subject to the jurisdiction of the Commission.[60]

The term "common carrier," as used in the Public Utilities Law of the District of Columbia, is construed by the Commission to include any persons, firm, or corporation operating any public motor bus or motor vehicle for hire or for the transportation of passengers in the District of Columbia with sufficient regularity to enable the public to take passage therein at any point intermediate to the stable or stand of any such vehicle, or operating such vehicle over a route sufficiently definite to enable the public to ascertain the streets and avenues on which such vehicles can be found *en route*.[61]

Under the statutes of Maryland, the term "common carrier" includes all persons and association of persons, whether incorporated or not, operating automobiles and motor cars or motor vehicles for public use, in the conveyance of persons or property within the state.[62]

In New Hampshire, "every person, firm, or corporation operating any motor vehicle other than a street car upon any public street or way in the business of transporting passengers for hire, and receiving and discharging passengers along a regular route over which the vehicle is operated," is declared to be a common carrier, subject to the provisions of the act.[63]

Under the New Jersey Public Utilities Act, the term "public utility" includes the owners or operators of auto-busses, commonly called jitneys, the route of which in whole or in part

[59] Sections 2–E and 3 of the Public Utilities Act, chap. 127, Laws of 1915.

[60] Section 2 of Connecticut Act of 1921, Concerning Public Service Motor Vehicles Operating Over Fixed Routes.

[61] In Re Jurisdiction Over Motor Bus Lines and Similar Common Carriers (D. C.) Order No. 160, P. U. C. No. 1417 (1) 13, August 28, 1915.

[62] Section 1½ of chapter 180, of the Acts of the General Assembly of Maryland, 1910, as amended by chapter 445 of the Acts of the General Assembly for 1914.

[63] Chapter 86, Laws of 1919, of New Hampshire.

parallels upon the same street the line of any street railway or traction railway.[64]

The term "public utility," as defined by the Public Service Commission Law of Nevada, includes any company or individual or association of individuals owning or operating automobiles, auto trucks, or other self-propelled vehicles, engaged in transporting persons or property for hire over and along the highways of the state as common carriers.[65] A requirement of the Nevada Commission with reference to the filing of bonds and tariff schedules by owners of automobiles engaged in the transportation of persons or property for hire along the highways of the state as common carriers, has been held applicable to the owners of automobiles operated as common carriers on regular schedules between specified points, or holding themselves, employees, or equipment, out for hire upon call to transport persons or property between various points in the state, such order being inapplicable to owners of hearses, ambulances, taxicabs, automobiles, or auto-trucks not operating as common carriers.[66]

In New York, any person or any corporation, owning or operating a stage route, bus line or motor vehicle line or route, or vehicles carrying passengers at a rate of fare of 15 cents or less for each passenger within the limits of a city or in competition with another common carrier which is required by law to obtain the consent of the local authorities of said city to operate over the streets thereof, is deemed to be included within the meaning of the term "common carrier" as used in the Public Service Commission Law.[67]

In Ohio, "any person, or persons, firm or firms, copartnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, when engaged in the business of carrying and transporting persons, in motor vehicles of any kind whatsoever, for hire, from one village or city to any other village or city in this state, or to or from any city or village in this state to or from a point outside the state,

[64] Section 15 of the Public Utilities Act, as amended by chap. 149, P. L. 1921.

[65] Public Service Commission Law, chap. 109, Stats. 1919, § 7.

[66] General Ruling No. 3 (Nev.) P.U.R.1919C, 922.

[67] Sections 25 and 26 of the New York Transportation Law.

is a transportation company, and as such is declared to be a common carrier (public utility)." [68]

The term "common carrier," when used in the Utah statute, includes every railroad corporation, street railroad corporation, automobile corporation, and every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, engaged in the transportation of persons or property for public service, over regular routes between points within this state.[69] Automobile corporations are declared to be public utilities subject to the jurisdiction and regulation of the Utah Commission.[70] In a Utah case, a complaint was made that the owners of an automobile truck line were operating in competition with an existing line and without authority of the Commission. The defense was that the owner did not hold himself out to the public as a common carrier, that he had a contract with one company for the distribution of oil, that individuals had come to him and asked him to haul their goods, that he had made a verbal contract with some of them and a written contract with others. He had not, he said, solicited any business. The Commission held that "a person operating an auto freight service for the public or any portion thereof is a common carrier and subject to the provisions of the Public Utilities Act of Utah, although such operation consists in the transportation of freight under contracts.[71] Usually, the owner of an automobile must not only operate for hire, but along a definite route, to bring himself within the status of common carrier or public utility within the jurisdiction of the Commission.[72]

The West Virginia Commission has been held to have power over jitney busses operated in the same portion of a city in which street cars are operated and in more remote parts where there are no car lines, when they are maintaining regular routes, schedules, and service, carrying indiscriminately all persons de-

[68] Section 614-2, General Code of Ohio.

[69] Public Utilities Acts of Utah, chap. 2, § 4782, par. 14.

[70] Public Utilities Acts of Utah, chap. 2, § 4782, par. 28.

[71] Paulos v. Radebaugh (Utah) P.U.R.1921D, 377.

[72] Public Utilities Commission v. Garviloch, 54 Utah 406, P.U.R.1919E, 182, 181 Pac. 272. See also on this point cases cited under Certificates of Convenience and Necessity.

siring to ride, and charging a uniform fare, thus holding themselves out as common carriers of persons.[73]

In Wisconsin, "every person, firm, or corporation operating any motor vehicle along or upon any public street or highway for the carriage of passengers for hire and affording a means of local, street, or highway transportation, similar to that afforded by street railways, by indiscriminately accepting and discharging such persons as may offer themselves for transportation, along the course on which such vehicle is operated or may be running," is declared to be a common carrier.[74]

In determining the status of an automobile operator, the point of inquiry is not what the charter says he is, or what he pretends to be, but what he does. The question to be passed upon is: What is the actual nature of the business carried on? Justice Holmes, of the United States Supreme Court, in discussing the status of a taxicab company as a public utility, said: "The plaintiff is a Virginia corporation, authorized by its charter, with copious verbiage, to build, buy, sell, let, and operate automobiles, taxicabs, and other vehicles, and to carry passengers and goods by such vehicles; but not to exercise any of the powers of a public service corporation. It does business in the District, and the important thing is what it does, not what its charter says." [75] The same would, of course, be true in determining the character of a jitney, auto bus, or auto truck company. Subterfuges have sometimes been adopted by automobile owners to avoid the regulatory provisions of the statutes, but the true character of the business cannot be concealed behind such devices. A special arrangement by which passengers of an auto bus line were considered current members of a "community auto club," the qualification for which was the payment of $1, upon which the members received seven tickets as a gift, was held to be in the nature of a subterfuge, not altering the service of the auto bus line as a common carrier. The automobile operators alleged that they had not held themselves out as common carriers and that although they transported passengers they did

[73] Smith v. Nunnelly (W. Va.) P.U.R.1915E, 177.

[74] Chapter 546, Wisconsin Laws of 1915, § 1.

[75] Terminal Taxicab Co. v. Kutz, 241 U. S. 252, P.U.R.1916D, 972, 60 L. ed. 984, 36 Sup. Ct. Rep. 583.

so under the special arrangement and upon individual bargain and that they had no fixed route, no termini, no time schedule, and no established rates. But they could not escape the provisions of the law in this way.[76]

V. Jurisdiction of Commissions.

a. In general.

The question of whether automobile transportation comes under Commission jurisdiction by virtue of its character as common carriage or public utility business has already been discussed. It only remains to consider how complete that jurisdiction is.[77]

The California Commission is given very complete jurisdiction over motor transportation. It is vested with power and authority to supervise and regulate every transportation company in the state. Transportation companies, by statutory definition, are made to include automobiles, jitney busses, auto trucks, stages, or auto stages, used in the transportation of persons or property, or the common carriage for compensation over any public highway in the state between fixed termini, or over a regular route, not operating exclusively within the limits of an incorporated city or town, or of a city and county, the term not including owners or operators of taxicabs, hotel busses, or sightseeing busses. The Commission is given power to fix the rates, fares, charges, classifications, rules, and regulations of each transportation company, to regulate the accounts, service, and safety of operation of each, to require the filing of annual or other reports, and of other data, and to supervise and regulate them in all other matters affecting the relationship between the companies and the traveling and shipping public; to prescribe rules and regulations affecting them notwithstanding the provisions of any ordinance or permit of any incorporated city or town, city and county or counties. In case of any conflict between any order, rule, or regulation of the Commission and ordinance or permit, the order, rule, or regulation of the Commission prevails.[78] Any order, rule, or regulation made by the Commission

[76] Lehigh Valley Transit Co. v. Bauder (Pa.) P.U.R.1921D, 404.

[77] *Supra*, IV.

[78] Sections 1 and 4, chap. 213, Statutes of 1917.

in the exercise of the authority conferred upon it, supersedes the conflicting provisions of any municipal or county ordinance.[79] But the Commission has been held to have no jurisdiction to grant or deny a certificate to operate an auto stage line as a common carrier, in so far as it is proposed to operate such line over privately owned roads.[80]

The Colorado Commission has complete jurisdiction over automobile transportation, including the regulation of rates, fares, service, etc. This is because they are brought within the terms of common carriers and public utility as used in the public utility act.[81]

The District of Columbia Commission has jurisdiction over automobile transportation.[82]

In Connecticut, jitney owners or operators being declared common carriers, such jurisdiction as the Commission has over common carriers extends, of course, to jitneys.[83]

The Illinois Commission is given jurisdiction over every corporation, company, association, joint stock company, or association, firm, partnership, or individual, their lessees, trustees, or receivers appointed by any court whatsoever (except such public utilities as are operated by any transportation district or any municipality) which may own, control, operate, or manage within the state directly or indirectly for public use any plant equipment or property used or to be used for, or in connection with, the transportation of persons or property or that may own or control any franchise, license, permit, or right to engage in any such business. It is provided that the term "transportation of passengers" shall include any service in connection with the receipt, carriage, and delivery of the person transported and its baggage, and all facilities used and necessary to be used in connection with the safety, comfort, and convenience of the person transported, and that the term "transportation of property" shall include any service in connection with the receipt, carriage, delivery, elevation, transfer in transit, ventilation, re-

[79] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

[80] Re San Joaquin Light & P. Corp. (Cal.) P.U.R.1921A, 613.

[81] Sections 2–E and 3 of the Public Utilities Act, chap. 127, Laws of 1915.

[82] Act of March 4, 1913, 37 Stat. at L. 938, chap. 150, § 8.

[83] *Supra*, IV., footnote 60.

frigeration, icing storage, and handling of the property transported.[84]

In Maine, the Commission is given jurisdiction only over passenger motor transportation. The provision in the Maine statute is that the Public Utilities Commission shall have jurisdiction over "every person, firm, or corporation operating any motor vehicle upon any public street or highway for the carrying of passengers for hire, and in such manner as to afford a means of transportation similar to that offered by street railways, and commonly known as jitney or jitney bus, operating regularly over routes between points within this state." [85]

The Maryland Commission has jurisdiction over rates and service of motor vehicles as well as over the question of public convenience and necessity.[86]

In Massachusetts, owners of automobiles for the carriage of passengers for hire, similar to the carriage of passengers by railway companies by indiscriminately receiving and discharging such passengers along the route on which the vehicle is operated between fixed and regular termini, are required to obtain a license from the municipal authorities. They must operate subject to the orders, rules, or regulations of the local authorities. But within thirty days from the adoption of such rules or regulations, any person operating a motor vehicle or railway company operating a railway in the municipality, or any twenty residents thereof, can petition the department of public utilities for the alteration, amendment, or revocation of such order, rule, or regulation and for the establishment of orders, rules, or regulations to be thereafter observed by the motor vehicle operator upon any streets or ways in such municipality. The Department, after notice and hearing, may alter, amend, or revoke the order, rule, or regulation of the municipality and establish in place thereof the order, rule, or regulation thereafter to be observed in such municipality, and fix the amount, class, and kind of security by bond or otherwise which the licensees are required to give. Thereafter, the Department, upon its own initiative

[84] Section 10 of the Illinois Commerce Commission Law, effective July 1, 1921.

[85] Chapter 184, § 1, Laws 1921.

[86] See Certificates of Public Convenience and Necessity, *infra*, VIII., b.

or upon petition of any motor vehicle operator or street railway in the municipality or any twenty residents thereof, after notice to the licensing authority of the town, may alter or amend any order, rule, or regulation established by the Department, or may adopt orders, rules, and regulations in substitution thereof. Such orders are not subject to amendments or appeals by a town or by the licensing authority thereof.[87]

The New Jersey Board of Public Utility Commissioners is given general supervision and regulation of, jurisdiction, and control over, all public utilities including, among others, every individual, copartnership, association, corporation, or joint stock company, their lessees, trustees, or receivers appointed by any court whatsoever that may own, operate, manage, or control within the state of New Jersey any auto bus, commonly known as a jitney, the route of which in whole or in part parallels upon the same street, the line of any street railway or traction railway.[88] The Commission has no jurisdiction over truck lines carrying freight; but the Public Utility Act has been amended so as to make auto busses or jitneys public utilities where the route parallels in whole or in part, the line of a street railway company. The jurisdiction of the Board does not apply where local permission for operation was obtained prior to March 15, 1921.

Automobile carriers having, by § 25 of the New York Transportation Law, been included within the meaning of the term "common carrier" as used in the Public Service Commission Law, the Commission is inferentially given all the jurisdiction over automobile carriers that the Public Service Commission has over such common carriers as railroads, street railroads, etc. The Commission, therefore, probably has jurisdiction over the service, rates, securities, etc., of such carriers, but as a matter of practice, after the Commission determines to grant or refuse a certificate, it pays no further attention to the matter until a further call for action is made upon it in some way. The New York law needs to be amended radically if there is to be any possibility of satisfactory administration. It is uncertain, for example, what the extent of the Commission's jurisdiction is over a route partly with-

[87] Sections 45 and 47, chap. 159, General Laws of Massachusetts.
[88] Section 15, Laws of 1911, as amended by chapter 149, P. L. 1921.

in a city, that is to say whether the certificate sought for and granted or refused by the Commission extends to the route as a whole or to that part of the route only which is within a city, or within a town or village which has adopted the law by the act of the town or village authorities. Chapter 667 of the Laws of 1915 of New York extended the responsibility of the Commission at least to the point of determining that in no case should a certificate of convenience and necessity issue if the Commission, to whom application had been made, believed the ultimate effect of granting the certificate would be detrimental, rather than helpful, to the community affected.[89] The jurisdiction of the New York Transit Commission extends to stage or omnibus lines, the extent of the subject matter of the jurisdiction being the same as that over railroads and street railways.[90]

The North Carolina statute relating to the Corporation Commission is broad enough to give the Commission jurisdiction over automobile transportation to the full extent that it has over other carriers. It has jurisdiction over "railroads, street railways, steamboats, canals, express and sleeping car companies," and all other companies or corporations engaged in the carrying of freight or passengers and all copartnerships or individuals engaged in the business of common carriers. Even taxicabs would appear to be within the jurisdiction of the Commission; but it has never exercised any jurisdiction over automobile transportation.[91]

In Ohio, the jurisdiction of the Commission is limited to the rates and service and general police powers as to safety. The only certificate of necessity required under the Ohio law, is for telephone companies.[92]

The Pennsylvania Commission has the same jurisdiction over automobile transportation that it has over other common carriers, therefore extending to rates, service, etc.[93]

[89] Re Ashmead (N. Y. 2d Dist.) P.U.R.1916D, 10.

[90] Chapter 134 of the Laws of 1921, as amended by chapter 335 of the Laws of 1921, now being § 5-a of the Public Service Commission Law and chapter 48 of the Consolidated Laws.

[91] 1 Compilation of Laws Relating to the North Carolina Corporation Commission, issued by the Commission.

[92] See *supra*, IV., footnote 68.

[93] Act of July 26, 1913 (P. L. 1374), known as the Public Service Company Law.

The Utah Commission has been given jurisdiction over auto transportation companies with full power over the granting of certificates of convenience and necessity, rates, fares, charges, and service.[94]

The Commission or Department of the state of Washington is vested with power and authority to supervise and regulate every auto transportation company in the state, and to fix, alter, and amend just, fair, reasonable, and sufficient rates, fares, charges, classifications, rules, and regulations of each such auto transportation company; to regulate the accounts, service, and safety of operations of each such auto transportation company; to require the filing of annual and other reports and of other data by such auto transportation companies; and to supervise and regulate auto transportation companies in all other matters affecting the relationship between the auto transportation company and the traveling and shipping public. And the Commission may at any time, after a hearing upon notice, at which it shall be proven that the holder has wilfully violated or refused to observe any of its proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under the provisions of the act, subject to the holder's rights of rehearing, review, and appeal.[95] The fact that the service conducted by an auto bus line is an integral part of a ferry system operated by a municipal corporation, does not exempt it from the provisions of an act regulating jitney busses.[96]

Under Wisconsin statutes of 1917, §§ 1797–62 to 1797–68, the Wisconsin Railroad Commission has no general supervisory power or control over motor vehicles operating in passenger transportation after it has once acted in issuing the required certificate authorizing their operation.[97] It has no power to regulate the rates or other features of jitney service after having passed upon the application of the individual jitney operators in the first instance.[98]

The question of whether the regulation of certain classes of

[94] Public Utilities Acts of Utah, chap. 4.

[95] Chapter 111 of the Laws of 1921 of Washington.

[96] State v. Ferry Line Auto Bus Co. 93 Wash. 614, 161 Pac. 467.

[97] Monroe v. Railroad Commission, 170 Wis. 180, P.U.R.1920A, 721, 174 N. W. 450.

[98] Re Wisconsin Jitneymen's Asso. (Wis.) P.U.R.1920A, 915.

automobile carriers, and not of others, constitutes an unlawful discrimination, has already been discussed.[99] But whether a Commission can distinguish as between carriers of the same kind is a different question. It has been held, however, that the jurisdiction of the Public Utilities Commission of the District of Columbia over a public utility under the act of March 4, 1913, cannot be defeated because such jurisdiction has not been assumed over other similar concerns, where the excuse offered by the Commission is that it did not consider that the omitted concerns did business sufficiently large in volume to come within the meaning of the act, and there is nothing to impeach the good faith of the Commission, or to give the concern included just cause for complaint.[100]

No matter to what subjects the jurisdiction of the Commission may extend, it cannot go into questions relating to management except for certain purposes. This limitation has been pointed out in a Pennsylvania case, in which the Commission held that upon an application for permission to operate a taxicab service, the internal operations of the partnership applying therefor are of concern to the Commission only, as they affect the service to be rendered to the public.[101]

b. Rules and regulations.

Commissions having jurisdiction over motor vehicle transportation would necessarily have implied authority to make such reasonable rules and regulations with reference thereto as they might deem necessary for the public welfare; but such authority has been expressly conferred in two states, at least. In Illinois, all corporations operating motor vehicles for hire are required to comply with the Commission rules and regulations.[102]

The Maine Commission is authorized by statute to make rules and regulations governing the operation of motor vehicles, which are to include provisions concerning the route of operation, schedule to be operated and maintained, rates of fare to be

[99] *Supra*, II.

[100] Terminal Taxicab Co. v. Kutz, 241 U. S. 252, P.U.R.1916D, 972, 60 L. ed. 984, 36 Sup. Ct. Rep. 583.

[101] Re Cresson Taxi Service (Pa.) P.U.R.1919C, 922.

[102] Re Rules and Regulations governing Motor Vehicles, General Order No. 68 (Ill.) July 28, 1921.

charged for the carriage of passengers, the safeguarding of passengers, and other persons using the streets and highways, and such other reasonable regulations as may be deemed necessary for the safety and convenience of the public.[103] The New Hampshire Commission, by general or special orders, may establish reasonable rules and regulations relating to the speed and operation of motor vehicles, and the number of passengers to be carried therein and otherwise safeguarding the public interest.[104]

VI. Jurisdiction of courts.

The jurisdiction of the courts with respect to automobile transportation will not be examined here. It does not differ from their jurisdiction with reference to regulation of other utilities, which includes the right to review in one form or another, the action of the Commissions or local authorities, as well as the power to determine the validity of the laws upon which the power to regulate is based. It has been held, for example, that although a court is of exclusive civil jurisdiction, it may inquire into the validity of a criminal jitney ordinance and restrain an enforcement which will destroy property rights.[105] But the powers of the courts to determine the validity of statutes and ordinances, and to review the acts of the local authorities or state Commissions, is so well settled that it need not be further alluded to in connection with automobile transportation.

VII. Powers of municipalities.

It has been held that a city has the undoubted right to prevent the use of its streets by jitney busses.[106] On the other hand, it has been declared that while a municipality has the right to regulate the running of jitneys in the interest of public safety, the regulation must not be carried to the extent of prohibition.[107] There can be no doubt, however, as to their power to regulate automobile transportation.[108] One conducting a jitney business

[103] Section 2, chap. 184, Laws of Maine, 1921.

[104] Section 2, chap. 86, New Hampshire Laws, 1919.

[105] Auto Transit Co. v. Ft. Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[106] Cummins v. Jones, 79 Or. 276, P.U.R.1916D, 7, 155 Pac. 171.

[107] Jitney Bus Asso. v. Wilkes Barre, 256 Pac. 462, 100 Atl. 954.

[108] Ex parte Cardinal, 170 Cal. 519, P.U.R.1915E, 282, 150 Pac. 348.

on the streets of a city is a carrier of passengers for hire and the city may require a bond,[109] provided the bond be not made prohibitive in its nature either by being too large an amount or by being unnecessarily restricted as to those who may sign it.[110]

A jitney ordinance, requiring a bond to pay damages arising from wrongful operation, and otherwise regulating jitneys, has been held authorized by charter power to enact and enforce ordinances necessary to protect health, life, and property; to prevent and remove nuisances; to preserve and enforce good government, order, and security; and to have and enjoy general police powers.[111] And under a charter giving a city control of its streets, with power to regulate the use thereof and charging it with the duty to enforce its police power, it has been held that the municipality has power to pass an ordinance requiring an operator of a jitney to provide for indemnity.[112]

Automobile transportation may be regulated under a statutory power to regulate all carriages for hire.[113] A city which has full control of its streets can grant the use of some streets and refuse the use of others for jitney purposes;[114] and may prohibit over-loading of jitneys and the drawing of trailers.[115] Jitneys have no right to operate on the streets of a city where statutory provisions empowering the city to pass an ordinance authorizing the issuance of licenses, and requiring operators to procure licenses and to execute indemnity bonds against liability for injuries, have not been followed.[116]

In dismissing a writ of habeas corpus charging illegality of an ordinance regulating jitney busses for violation of which the operator was held in restraint of his liberty, an exhaustive discussion of the powers of municipalities to regulate vehicles was

[109] Green v. San Antonio, — Tex. Civ. App. —, 178 S. W. 6.

[110] Jitney Bus Asso. v. Wilkes Barre, 256 Pa. 462, 100 Atl. 954.

[111] Auto Transit Co. v. Ft. Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[112] Ex parte Sullivan, 77 Tex. Crim. Rep. 72, P.U.R.1915E, 441, 178 S. W. 537.

[113] Willis v. Ft. Smith, — Ark. —, P.U.R.1916D, 6, 182 S. W. 275.

[114] Peters v. San Antonio, — Tex. Civ. App. —, P.U.R.1917F, 903, 195 S. W. 989.

[115] Huston v. Des Moines, 176 Iowa 455, P.U.R.1916D, 7, 156 N. W. 883.

[116] Memphis Street R. Co. v. Rapid Transit Co. 133 Tenn. 99, P.U.R. 1916A, 834, 179 S. W. 635.

entered into by Poffenbarger, Judge of the West Virginia supreme court of appeals, and the court held that all rights of common carriage on highways, such as those conducted by means of drays, omnibusses, hackney coaches, and taxicabs, were legislative grants or concessions, much lower in legal quality and dignity than the rights of ordinary use to which highways are incidentally subjected by citizens in travel and the prosecution of their business.[117]

In a Louisiana case, it was said: "Streets of the cities and towns in Louisiana being among the things that are 'public' and 'for the common use,' no individual can have a property right in such use for the purposes of his private business, unless, speaking generally, that business being in the nature of a public service or convenience, such as would authorize the grant, the right has been granted by the state, which alone has the power to make or authorize it, or by the particular city or town, acting under the authority of the state, and in such case the right can be exercised only in accordance with the conditions of the grant." [118]

Under the Oregon law, a municipality was held to have the power to enact an emergency ordinance for the regulation of jitneys without referendum, under § 1, article 4, of the Oregon Constitution, which provides that the referendum may be ordered except as to laws necessary for the immediate preservation of the public peace, health, or safety.[119]

Incorporated cities and towns, cities and counties, and counties of California were given power by chap. 213, Laws of 1917, which became effective August 27, 1917, to issue permits for the operation of motor vehicles and to enact ordinances for the supervision and regulation, also to provide penalties for the violation of such ordinances. Under this statute, exclusive jurisdiction is given to municipalities when such transportation is conducted wholly within the limits of incorporated cities, while the Commission has jurisdiction when such transportation is not confined within such limits.[120] A municipality in California has the power to require owners of jitney busses to fur-

[117] Ex parte Dickey, 76 W. Va. 576, P.U.R.1915E, 93, 85 S. E. 781.
[118] Le Blanc v. New Orleans, 138 La. 243, 70 So. 212.
[119] Thielke v. Albee, 79 Or. 48, P.U.R.1916D, 6, 153 Pac. 793.
[120] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

nish security in the shape of a bond or an insurance policy, to indemnify persons who may be injured or damaged by negligent or illegal operation.[121]

In New Hampshire, every city or town has the power to make by-laws relating to the licensing of motor vehicles and to fix reasonable license fees therefor.[122]

It has been held in West Virginia that under a charter provision empowering a municipality to grant, refuse, or revoke licenses to owners of vehicles kept for hire therein, and to subject them to such regulations as the interest and convenience of the inhabitants thereof may require, the municipality has power to prescribe the hours of service of motor vehicles, and indemnity against injury to persons and property.[123] The Commission has deemed it unwise and unnecessary to establish rules and regulations for the operation of jitneys in a city whose charter power in such respect is much broader than that of the Commission and has been exercised by the enactment of a comprehensive ordinance, and which city could supervise and control jitneys more effectively than the Commission.[124]

It has been held in Kansas that before the courts will interfere with the exercise of legislative power granted to a city to license and regulate motor vehicles, it must appear that the attempted exercise of such power is flagrantly unjust, unreasonable, or oppressive.[125]

VIII. Conditions precedent to operation.

a. In general.

Before beginning operation, owners of automobiles engaged in the transportation business must, of course, comply with all valid state and municipal laws governing automobile traffic, as well as with the rules of the Commission. The Washington Department of Public Works has made a rule to this effect. As a condition precedent to operation as an auto transportation company, an applicant for such privilege must comply with state

[121] Ex parte Cardinal, 170 Cal. 519, P.U.R.1915E, 282, 150 Pac. 348.
[122] Chapter 86, § 3, New Hampshire Laws of 1919.
[123] Ex parte Dickey, 76 W. Va. 576, P.U.R.1915E, 93, 85 S. E. 781.
[124] Smith v. Nunnelly (W. Va.) P.U.R.1915E, 177.
[125] Desser v. Wichita, 96 Kan. 820, P.U.R.1916D, 7, 153 Pac. 1194.

laws governing the operation of motor vehicles and must receive such license or licenses as may be lawfully required under the ordinances of any city or town within the state in which the said motor vehicle is to be operated.[126]

Before putting any jitney into service in New Hampshire, the licensee must file with the Commission the following information:

(a) The make of the motor vehicle.

(b) The year the motor vehicle was made.

(c) The seating capacity of the motor vehicle according to the manufacturer's rating thereof.

(d) The New Hampshire registration number of the motor vehicle.

(e) The number of miles the motor vehicle has been run.[127]

b. Certificates of convenience and necessity.

1. Necessity for.

Whenever state Commissions are given jurisdiction over automobile transportation, operators are required to obtain permits or certificates from the Commission entitling them to engage in the business. These are granted only when it is shown that public convenience and necessity require the service. The certificates are generally called certificates of public convenience and necessity. What is meant by public convenience and necessity? There was an elaborate discussion of this question by Commissioner Irvine in a New York case in which he said in conclusion: "Taking the phrase as an entity, it does not mean to require a physical necessity or an indispensable thing. It is dangerous to undertake to formulate abstract definitions in deciding a concrete case, but we take it that for such purposes as are involved in this and similar applications, a public convenience and necessity exists when the proposed facility will meet a reasonable want of the public and supply a need, if existing facilities, while in a sense sufficient, do not adequately supply that need." [128]

[126] Section 2, Rule 7, Rules and Regulations of the Department of Public Works of Washington.

[127] Rule 1, Rules and Regulations of New Hampshire Public Service Commission, governing jitneys, May 28, 1919.

[128] Re Troy Auto Car Co. (N. Y. 2d Dist.) P.U.R.1917A, 700.

The requirement in Arizona is that motor transportation shall not be engaged in on routes wholly within the state until the Commission has granted a certificate indicating that the applicant has complied with the rules and regulations of the Commission relating to the filing of statements or schedules and insurance policies.[129]

In California, the operator of automobiles engaged in carriage must obtain a certificate of public convenience and necessity from the Commission, except those operating in good faith at the time the act became effective, which was on May 10, 1917, and except for operation exclusively within the limits of an incorporated city, town, or city and county. The Commission has power, with or without hearing, to issue the certificate or to refuse it, or to issue it for the partial exercise only of the privilege sought, and it is also given power to attach to the exercise of the right granted therein such terms and conditions as in its judgment the public convenience and necessity may require.[130] The law applies to the transportation of truck loads as well as to the transportation of smaller quantities.[131] The Commission, in denying an application for a certificate of convenience and necessity for the operation of a stage line, said: "No person has a vested right to engage in a public utility service. The law looks not to the operator, but to the convenience and necessity of the public, and clearly contemplates that applications of this character shall be decided on the basis of this test alone, and not on the basis of the desires or necessities of the operators. Operators may be permitted to enter the field only at such times, and in such places, and under such conditions, as will best subserve the convenience and necessity of the public." [132]

It is necessary for automobile transportation lines in Colorado, when in competition with railroads, to secure a certificate of public convenience and necessity from the Commission.[133]

In Connecticut, certificates for the operation of jitneys must be granted by the Commission specifying the route over which

[129] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52.

[130] Section 5, chap. 213, Statutes of 1917; Re Transportation Co. (Cal.) P.U.R.1918B, 297.

[131] Re Jones (Cal.) P.U.R.1921D, 684.

[132] Re Santa Clara Valley Auto Line (Cal.) P.U.R.1918C, 319.

[133] See Jurisdiction, *supra*, V., footnote 81.

the jitney may operate and the service to be furnished and that the public convenience and necessity require the operation over such route. Certificates are granted only upon written application and hearing.[134]

An Idaho statute prohibited operation by common carriers of freight or passengers, or both, by automobile until the issuance of a license by the Public Utilities Commission upon the payment of specified sums per annum according to the carrying capacity of the cars. The statute exempted vehicles running on rails or tracks and also expressly exempted hotel busses operating solely between hotels and trains, and automobiles and auto trucks used for, and engaged in, carrying United States mails on star routes. On account of the exemption of the latter class of automobiles, the statute, which was held to impose an occupation tax, was declared unconstitutional by the supreme court of Idaho.[135]

Under the Maryland statute, it is provided that it shall be the duty of each owner of a motor vehicle to be used in the public transportation of passengers for hire, and of each owner of a motor vehicle to be used in the public transportation of merchandise or freight for hire, respectively, operating over a state, state-aid, or improved county road and streets and roads of incorporated towns and cities in the state of Maryland, to secure a permit from the Public Service Commission of Maryland, to operate over said roads and streets and present the same to the motor vehicle commissioner annually, at the time and according to the methods and provisions prescribed by law for owners of all other motor vehicles to make an application in writing for registration with the commissioner of motor vehicles.[136]

Auto transportation companies in the state of Nevada and motor vehicles operating in competition with railroads or other automobile common carriers serving the same community, are

[134] Section 3, of Connecticut Act Concerning Service Motor Vehicles Operating Over Fixed Routes (1921).

[135] State v. Crossen (Ida.) 190 Pac. 922.

[136] Section 1 of chapter 610 of the Acts of the General Assembly of Maryland, 1916, and § 1 of chapter 714 of the Acts of the General Assembly for 1916, as amended by § 1 of chapter 199 of the Acts of the General Assembly for 1918, and § 1 of chapter 304 of the Acts of the General Assembly for 1918.

required to apply for a certificate of public convenience and necessity authorizing such service.[137]

The New Hampshire act forbids operation of passenger cars for hire along regular routes "unless upon petition and public hearing thereon the Public Service Commission shall determine that the public good requires such operation and shall have granted permission therefor." [138]

In New York, operators of stage routes, bus lines, or motor vehicles, charging a fare of 15 cents or less for each passenger within the limits of a city or in competition with another common carrier which is required by law to obtain the consent of the local authorities of said city to operate over the streets thereof, are required to obtain a certificate of convenience and necessity.[139] The operation of a bus line between two cities, in competition with another common carrier, without a certificate of public convenience and necessity from the Public Service Commission was held unlawful.[140] And the operator of a bus line running partly in a village and partly outside competing with an electric railway has been required to obtain a certificate of convenience and necessity from the Commission.[141]

A person operating a jitney bus in a city in Pennsylvania must secure a certificate of public convenience from the Commission, notwithstanding the statute of June 1, 1915 authorizing cities to regulate and license certain motor vehicles, since this did not repeal the Public Service Company Law declaring it unlawful for any public service company to exercise any municipal franchise or privilege without securing such a certificate.[142] Nor can anyone operate automobiles as a common carrier upon the public highways without the approval of the Pennsylvania Commission, by virtue of automobile licenses granted to him by the state

[137] Public Service Commission Law, chap. 109, § 36½; General Ruling No. 4 of Rules and Regulations, Nevada Public Service Commission.

[138] Chapter 86, § 2, New Hampshire Laws of 1919.

[139] Sections 25 and 26 of the New York Transportation Law.

[140] Public Service Commission v. Mt. Vernon Taxicab Co. 101 Misc. 497, P.U.R.1918C, 320, 168 N. Y. Supp. 83.

[141] Niagara Gorge R. Co. v. Gaiser, 109 Misc. 38, P.U.R.1921C, 636, 178 N. Y. Supp. 156.

[142] Southern Pennsylvania Traction Co. v. Kane, Jr. (Pa.) P.U.R.1921C, 636; Wilkes-Barre R. Co. v. Parsons (Pa.) P.U.R.1917E, 371.

under a police law having reference to the use of public highways by all motor vehicles.[143]

Nor is it any answer to a complaint that auto bus service is being supplied without the permission of the Pennsylvania Commission, that the existing service rendered by complainant is inadequate.[144]

In Utah, no automobile corporation is allowed to establish or begin the operation of a line or route or any extension of an existing line or route without first obtaining a certificate of convenience and necessity from the Commission.[145]

In Washington, auto transportation companies are prohibited from operating for the transportation of persons or property for compensation between fixed termini or over regular routes without first obtaining a certificate of convenience and necessity from the Commission.[146]

These certificates are required in addition to the regular state licenses which all motor vehicles are compelled to have. Automobile common carriers within the state of Nevada are required to secure a license, for which a fee is payable in advance annually. License fees vary according to type of vehicle, weight, and class of highway upon which it is operated. It is not intended to discuss these general licenses.[147]

2. Application for.

In Arizona, applicants for operation of service cars and transfer trucks are required to file a verified statement containing the following information:

"a. Type of motor car to be used, with their trade or manufacturer's name.

"b. The horse power and seating capacity if a service car, and the horse power and ton carrying capacity if a transfer truck, as rated by the manufacturer.

[143] Scranton R. Co. v. Walsh (Pa.) P.U.R.1916D, 18.

[144] Fullington Auto Bus Co. v. Milligan (Pa.) P.U.R.1919F, 215.

[145] Laws of Utah, 1917, chap. 47, article 4, § 21 (a) and Rules and Regulations Governing Automobile Stage Lines, IV.; Public Utilities Commission v. Garviloch, 54 Utah 406, P.U.R.1919E, 182, 181 Pac. 272.

[146] Chapter 111 of the Laws of 1921 of Washington. Section 3, Rule 8 of the Rules and Regulations of the Department of Public Works of Washington.

[147] Laws of Nevada relating to State License, approved March 22, 1921.

"c. The factory, serial car number, motor number and state license number.

"d. The name of the owner and the name of the person or persons who will operate or drive the car.

"e. The headquarters and postoffice address of the owner.

"f. If car is to be operated from or within an incorporated town or city, a statement from the proper officer of the town or city that the operator has been duly licensel.

"g. The stand or location from which, and the territory within which, said car will operate.

"h. If a service car, a statement in writing from an insurance, bonding or indemnity company authorized to transact business in the state, to the effect that the car described as above required has been duly bonded as required by law for a period of not less than six months.

"i. A schedule of rates, charges and fares to be charged, and the regular hours of operation.

"j. Those desiring to engage in the operation of transfer trucks, shall further state the general character of transfer business to be engaged in, whether freight, express, or baggage." [148]

An applicant for a certificate to operate a motor vehicle in Illinois is required to submit proof that the applicant is incorporated under the laws of the state, and to present proof of notice other than by publication of the filing of such application to all competitors along or adjacent to the route over which the petitioner proposes to operate; also to submit proof of notice, other than by publication of the filing of such application with each and every municipality, county, or township into or through which the applicant proposes to operate motor vehicles, and also to publish notice of such application in secular newspapers once each week for two successive weeks. Before granting a certificate, the Commission requires the applicant to submit in evidence a certified copy of any ordinance pertaining to the operation of such motor vehicles upon the streets of any municipality, or if no ordinance has been granted, then a written statement from the mayor of the city, or president of the village board of any municipality into or through which the applicant proposes

[148] General Order, 72-A, June 2, 1920.

to operate showing authority or acquiescence of such city or village in such operation.[149]

In Maine, a license from the Public Utilities Commission is required for the operation of a motor bus and the operator before a license can be granted, is required to file an application in writing with the Commission in which he is required to state:

a. The make of the motor bus.

b. The year the vehicle was made.

c. The seating capacity of the motor bus according to its trade rating.

d. If the motor bus has been rebuilt or adapted, the seating capacity as rebuilt or adapted.

e. The number of miles run.

f. The rated horsepower.

g. The factory number.

h. The state license number.

i. The points between which the motor bus is to be operated.

j. The route, or routes, over which the motor bus is to operate, both going and returning.

k. The fare to be charged between points along the route.

l. The time of starting from the designated points, both going and returning.

m. The name of any electric or steam railroad, stage, or other common carrier with which the applicant will compete.[150]

All original applications for permits issuable by the Maryland Commission must be made upon blank forms prescribed by the Commission, and be signed by the applicant. At the time of making such application, the applicant must be given a printed copy of the rules of the Commission, unless he previously has received a copy, and be required to certify in his application that he has received and read these rules and agrees to comply with the provisions thereof. A complete schedule of proposed operation must accompany, and be filed with, the application. Any duty imposed by these rules upon applicants may, if the applicant be a corporation, be performed on behalf of such

[149] Re Rules and Regulations Governing Corporations Operating Motor Vehicles (Ill.) General Order No. 68, July 28, 1921.

[150] Rule 1, Rules and Regulations of Maine Public Utilities Commission governing use of Motor Vehicles, effective July 9, 1921.

applicant by a duly authorized agent. If the ownership or lawful right to possession of the motor vehicle for which a permit is desired is vested in two or more persons, any one of them may apply for such permit.[151]

It is the duty of the Commission, upon the application of any motor vehicle owner for a permit to operate any motor vehicle for the public transportation of passengers, or for the public transportation of merchandise or freight respectively, over any specified route, to investigate the feasibility of granting said permit, the number of motor vehicles to be used, the rate to be charged and if, in the judgment of the Public Service Commission, it is deemed best for the public welfare and convenience that the permit should be granted, the Commission is empowered and authorized to grant it; but, if the Commission deems the granting of such a permit prejudicial to the welfare and convenience of the public, the Commission is authorized to refuse to grant it.[152]

It was held by the New York Commission, Second District, that technical questions concerning the validity of a franchise to operate an auto bus system in a city, such as the effect of insufficient publication of the notice of public hearing and the grant of the right to operate over routes not mentioned in the notice, would not be decided by the Commission upon an application for a certificate of convenience and necessity, where the franchise was not obviously defective.[153]

It has also been held in New York that unrestricted consent by local authorities to the operation of a motor-bus line in a city may be used as the basis for a certificate of convenience and necessity for the operation in the city as a part of a competitive route between cities, although the petition for consent referred only to a part of the interurban route and, notwithstanding the consent, may have been secured by misrepresentation.[154] And that a pending application for a certificate of convenience and necessity for the operation of an auto bus line, based upon an ordinance permitting the applicant to operate for a certain

[151] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 3.
[152] Section 4 of the Acts of the General Assembly of Maryland for 1916.
[153] Petition of Gray (N. Y. 2d Dist.) P.U.R.1916A, 33.
[154] Re Carpenter's Bus Line Int. (N. Y.) P.U.R.1916D, 4.

period, which has been extended by a later ordinance, may be treated as if it were based upon the new ordinance, where the latter in no wise affect the disposition of the case on its merits.[155]

In Pennsylvania, application for the approval of the operation of additional cars, including substitutions and replacements, may be made under the original application docket number by petition verified by affidavit.[156]

Applications for certificates of convenience and necessity to operate motor vehicles for hire in the state of Washington must be accompanied by a time schedule showing the date and hour effective, the time of arrival and departure from and at all termini, the time of departure from all intermediate points, also the distance between all stops scheduled to be made either regularly or on application by intending passengers or shippers, and also all points on any route to which for any reason service cannot be rendered. Copies of such time schedules must be posted at stations or regular stopping places, and each operator or driver must have such a copy in his possession. Deviation from time schedules is prohibited.[157]

3. Form of certificate.

The permits issued in Maryland must be in such form as from time to time may be prescribed by the Commission, but in all instances must contain the Public Service Commission's permit number, the name and address of the person or persons, association, or corporation to whom or to which issued, the carrying capacity as fixed by the Public Service Commission in the case of a motor vehicle engaged in the public transportation of passengers, the carrying capacity as given by the manufacturer of such motor vehicle in the case of a motor vehicle engaged in the public transportation of merchandise or freight, and the schedule and route on which the same is authorized to operate. The grantee or grantees of any permit must notify the Commis-

[155] Re Troy Auto Car Co. (N. Y.) P.U.R.1917A, 700.

[156] Rules 1 and 2, General Order No. 18, Governing Automobile Transportation, Adopted October 21, 1919.

[157] Section 6, Rules and Regulations of the Department of Public Works of Washington (1921).

sion promptly of any change of address occurring after such issuance of permit.[158]

4. Scope of certificate.

The Pennsylvania Commission has ruled that the issuance of a certificate of public convenience for the operation of autobusses between two designated points over a named route includes the right to operate between intermediate points on the designated route, and that the refusal to permit a competitor to operate between the termini includes the denial of the right to operate between intermediate points.[159] And an order of the California Commission granting permission to operate a stage service between two specified points, was also held to cover all intermediate points, unless the order itself specifically restricts the certificate to the two termini mentioned, or to specific intermediate points. The Commission said: "If operative companies were not permitted to establish local service over portions of their through route, as outlined above, a condition would be created which would, in many instances, be against public policy as, if a company was required to establish new schedules covering their entire operative route, such additional schedules might require to be conducted at a financial loss in that the traffic between certain intermediate local points, might not justify the operation of through cars serving the entire route." [160]

5. Limitation of certificate.

Certificates of public convenience and necessity are often granted subject to specified limitations, restrictions, or conditions. Motor vehicle operators, for example, were allowed to operate between a city and a neighboring village subject to the conditions of the consent of the city, and to present and future ordinances thereof, and to the statutes of the state and upon the express condition that no passengers should be carried between one point and another within the city.[161] And the New York

[158] Re Regulation of Automobiles (Md.) Case No. 939 (1921), Rule 4.
[159] Landis v. Henry (Pa.) P.U.R.1919C, 554.
[160] Price v. Pickwick Stages (Cal.) P.U.R.1920E, 574.
[161] Re Bradbury (N. Y.) P.U.R. 1916D, 5; Re Sprague (N. Y.) P.U.R. 1916D, 5; Re Van Ostrand (N. Y.) P.U.R.1916D, 4.

Commission, Second District, granted a permit to operate a motor bus line between a city and a village subject to the consent theretofore granted by the city and all present and future ordinances of the city and statutes and requirements of the state, the certificate not to be assignable without the consent of the Commission and upon the further condition that the petitioners should not carry any passengers from one point to another within the city, but such line should be operated for through passengers only from any point within the city to points outside, and from points outside to any points within.[162]

The Illinois Commission reserves the right to grant certificates of convenience and necessity to other petitioners to operate motor vehicles for hire along the same route mentioned in a prior certificate.[163] And in Pennsylvania, certificates of public convenience for common carriage by means of automobiles or auto busses, when granted, are limited to the route, when specified, and number of cars and particularly to each automobile or auto bus designated in the certificate. The certificate includes only such motor vehicles as have been licensed by the State Highway Department, and persons are not permitted to drive or operate any such vehicle without license from State Highway Department.[164]

6. Display of certificate.

The Maryland Commission requires that permits be carried at all times in or on the motor vehicle for which issued, and displayed by the operator thereof at any time upon the demand of the proper representatives of the Public Service Commission, commissioner of motor vehicles, or police authorities of the state, or any municipal subdivision thereof. Permits issued under the provisions of the Commission's rules for the operation of motor vehicles for the public transportation of passengers for hire must be displayed publicly at all times in a conspicuous place in the motor vehicles for which issued.[165]

[162] Re Wilson (N. Y.) P.U.R.1916D, 4; Re Main (N. Y.) P.U.R.1916D, 5.

[163] Re Rules and Regulations governing Motor Vehicles, General Order No. 68 (Ill.) July 28, 1921.

[164] Rules 1 and 7, Order No. 18, Governing Automobile Transportation, Adopted October 21, 1919.

[165] Re Regulation of Automobiles (Md.) Case No. 929 (1921) Rule 5.

7. *Term of certificate.*

A certificate of public convenience or necessity may be granted for a definite or for an indefinite period. In Arizona, certificates of insurance are required to be issued for a period of not less than six months. This practice was brought about because operators had been in the habit of procuring policies for a thirty-day period only. This resulted in frequent lack of protection to the public by reason of expiration of policies and failure to effect prompt renewals.[166] Under the rules and regulations of the Maine Commission, permission to operate a motor bus will be granted for an indefinite period, but only upon condition that the licensee complies with the laws of the state relative to the operation of motor vehicles, and also complies with the rules and regulations of the Public Utilities Commission as issued from time to time.[167] An almost identical provision is found in the New Hampshire Commission's rules.[168]

In Maryland, permits may be issued by the Commission at any time during the year, and for such length of time as the Commission may deem best for the public welfare and convenience. Unless otherwise specified in any permit, the right to operate thereunder terminates on the thirty-first day of December next succeeding the date of issue, but permits may be renewed from year to year upon surrender of that issued for the year preceding. Permits shall not be transferable. No charge is made for the issue of any permit under the provisions of the Commission's rules.[169] In Pennsylvania, all certificates of public convenience for taxicabs, jitneys, and similar common carriers are required to be issued for a period not exceeding two years, from June 1st following the date of issuance, for calendar periods beginning June 1st, to be renewable upon application.[170] The right to operate an automobile transportation line

[166] General Order, 62–A, July 31, 1919; Re Verde Valley Stage Co. (Ariz.) P.U.R.1921C, 637.

[167] Rule 15, of Rules and Regulations of Maine Public Utilities Commission, effective July 9, 1921.

[168] Rule 11, of Rules and Regulations of New Hampshire Public Service Commission governing operation of Motor Vehicles, adopted May 28, 1919.

[169] Re Regulations of Automobiles (Md.) Case No. 939 (1921) Rule 2.

[170] Rule 6, Order No. 18, Governing Automobile Transportation, Adopted October 21, 1919.

without securing local permits or a certificate from the California Commission allowed under chapter 213 of the Laws of 1917 in the case of owners operating in good faith prior to May 1, 1917, has been held nontransferable.[171] Consequently, the purchaser of an automobile stage line which was in operation prior to May 1, 1917, must obtain a certificate from the Commission before he can continue to operate the purchased property.[172]

8. Transfer of certificate.

It is probable that wherever a certificate of public convenience and necessity for operation as an automobile carrier is required, the certificate when issued, is not transferable without the consent of the Commission. Under the rules of the Arizona Commission, persons desiring to sell their line or property are required to file with the Commission an application therefor, setting forth in detail:

a. A list of the property to be sold, together with the cash value of same.

b. The name of the party or parties to whom the property is to be sold.

c. Consideration to be paid for the property.

d. Surrender the certificate of convenience and necessity issued to the applicant, same to be held by the Commission pending its determination of the matter.

The proposed purchaser is required to apply for authority to purchase the property, describing it, and the consideration to be paid, and to apply upon the printed form provided by the Commission for a certificate of convenience and necessity.[173]

It is provided by statute in California, that any right, privilege, franchise, or permit held, owned, or obtained, by any transportation company may be sold, assigned, leased, transferred, or inherited as other property, only upon authorization of the Railroad Commission.[174] So it has been held that a new

[171] Re Westmoreland (Cal.) P.U.R.1918C, 318.

[172] Re Fuller (Cal.) P.U.R 1918E, 793; Re Lloyd (Cal.) P.U.R.1918C, 319.

[173] General Order No. 62–A, July 31, 1919.

[174] Section 5, chap. 213, Statutes of 1917; Re California National Bank, P.U.R.1921D, 486.

company which takes over the property of an established automobile transportation line must obtain a new certificate of public convenience and necessity, as well as new permits from the local authorities.[175] Operative rights, continued by statute without requiring an application for a certificate of public convenience and necessity, or new permits, have been treated the same way. In Pennsylvania all certificates of public convenience when granted are nontransferable.[176]

And in Washington, certificates of convenience and necessity held by an auto transportation company may be sold, assigned, leased, transferred, or inherited as other property, only upon authorization by the Commission.[177] The transfer may, of course, be authorized in a proper case. The responsibility of the proposed operator would be an important consideration. In this connection the Utah Commission, in authorizing the transfer of a certificate of public convenience from an individual to a corporation, was of the opinion that the service could be more efficiently governed, controlled, and directed through a responsible corporation, than by a number of individuals.[178]

9. Suspension, forfeiture, or revocation of certificate.

Operative rights may undoubtedly be forfeited, in some jurisdictions at least, and certificates of public convenience and necessity, licenses, or permits issued by the Commission revoked for sufficient cause. In Arizona failure to stop at railroad crossings, when required is sufficient cause for revocation of certificates of convenience and necessity.[179]

An automobile stage line cannot resume operation in California after temporarily discontinuing service by disregarding its time schedule during the winter months, without consent of the Commission, except by securing a certificate of public con-

[175] Re United States (Cal.) P.U.R.1918C, 319; Re Pickwick Stages (Cal.) P.U.R.1918C, 319.

[176] Rule 3, General Order No. 18, Governing Automobile Transportation, Adopted October 21, 1919.

[177] Section 3, Rule 16 of the Rules and Regulations of the Department of Public Works of Washington.

[178] Re Inglesby (Utah) P.U.R.1921C, 635.

[179] Re Automobiles at Crossings (Ariz.) General Order No. 5, Jan. 15, 1922.

venience and necessity from the Commission and permits from the governing bodies of all political subdivisions in the manner provided by statute.[180] The Commission has held, however, that a delay of approximately one year in commencing operation of an automobile truck line after the certificate had been granted, which certificate contained no specific time limit when operation must be commenced, would not work to the annulment of the permit when the delay was due to reasons beyond the control of the operator, and conditions were not shown to have materially changed since the granting of the certificate.[181] Where it appeared that the operator of an auto stage line had been indicted criminally, that his equipment had been attached by creditors, and that he had given no service over his route for some time, his operative rights were suspended.[182]

It has also been held that the certificate of convenience of an individual operating an automobile bus line subject to the jurisdiction of the California Commission who does not operate upon his regular published schedule or in accordance with the rules of the Commission, may be revoked.[183] The failure of any corporation to comply with each and every provision of the rules and regulations of the Illinois Commission governing the operation of motor vehicles for hire is full and sufficient cause to annul, cancel, and set aside any certificate of convenience and necessity.[184]

In Maine, failure to maintain the operating schedule for three days is good cause for revoking the license.[185]

The Maryland Commission has the following rule with reference to the revocation or suspension of permits:

"No permit issued by the Public Service Commission pursu-

[180] Calistoga & C. L. Stage Line v. White Transp. Co. (Cal.) P.U.R. 1918E, 821.

[181] Re Swett (Cal.) P.U.R.1921C, 637.

[182] Re California National Bank, P.U.R.1921D, 486. See also on this point Re Purdue (Utah) P.U.R.1919E, 196.

[183] Peninsula Rapid Transit Co. v. Friend (Cal.) P.U.R.1918E, 793.

[184] Re Rules and Regulations governing Corporations Operating Motor Vehicles (Ill.) General Order No. 68, July 28, 1921.

[185] Rule 9, Rules and Regulations of Maine Public Utilities Commission Governing Motor Vehicles, effective July 9, 1921.

ant to these Rules, except as hereinafter provided, shall be revoked until after hearing had upon not less than five days' written notice to the grantee or grantees thereof, and an opportunity given him or them or it to be heard in his, their or its defense. Notice of such hearing shall be in writing and shall be served in person upon such grantee, or one of them, if there be more than one, or proper agent for service, if the grantee be a corporation or mailed by registered mail at the address given in the application, or changed address subsequently filed with the Commission, which mailing, after a reasonable time for delivery according to due course of mail, shall be as effective and binding as personal service. No such permit shall be suspended until after hearing had before the Commission or its proper representative upon not less than three days' written notice served or mailed in the manner provided herein for the case of proposed revocation of permit. No person or persons, association or corporation shall operate any motor vehicle to which these Rules are applicable for the purposes, in the manner, and over the roads and streets described in Rule 1 hereof after the revocation of the permit issued therefor, or during the period of its suspension. In addition to the causes expressly specified in these Rules as grounds for revocation or suspension of permits, the flagrant or persistent violation of any of these Rules, or failure to secure from the Commissioner of Motor Vehicles, within thirty days after the issue of a permit under the provisions of these Rules, a license for operation pursuant to such permit, shall be sufficient ground, in the discretion of the Commission, for the revocation of a permit. The requirement for notice and hearing herein contained shall not extend to revocation of permit for failure to secure such license from the Commissioner of Motor Vehicles within thirty days after isssuance of permit, as above."[186]

The New Hampshire Commission has provided that licenses issued by it "may be revoked at any time after a hearing, when it is shown that said laws or rules and regulations have been violated or when, for other cause, it appears that it is no longer

[186] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 24.

necessary for the public good that the license shall continue in effect."[187] The Maine Commission has an identical rule.[188]

No express authority is given to the New York Commission to revoke certificates of convenience and necessity. In a state in which automobile carriers are placed on the same basis as other common carriers, the question presented by this lack of express authority to revoke, is whether the Commission has any more authority to recall the certificates than it would have to recall the certificate of a railroad or street railroad.

In Pennsylvania, the Commission reserves the right to revoke certificates at any time for violation of any of its rules or any failure to operate cars in a safe manner.[189] The right to furnish services under a certificate, the Pennsylvania Commission has said, carries with it the obligation to render that service at stated periods over an established route, and, therefore, any failure, through negligence or indifference, to comply with all the requirements imposed by a certificate of public convenience, may be deemed sufficient ground to warrant the Commission upon proper and competent proof to revoke such certificate at any time.[190]

In Utah, violators of the rules and regulations of the Commission or those prescribed by the laws of the state, are subject to have "any and all rights and privileges" granted by the Commission revoked upon proper proof of such violation.[191]

c. Local franchises, permits, or licenses.

Automobile carriers may be required to secure local franchises, permits, or licenses, in states in which state Commissions

[187] Rule 11, Rules and Regulations of the New Hampshire Public Service Commission governing operation of Motor Vehicles, adopted May 28, 1919. See also Rule 8 on this point.

[188] Rule 16, Rules and Regulations of the Maine Public Utilities Commission, effective July 9, 1921. Rule 14 also provides that: "The violation of any of the foregoing rules will be sufficient cause for the Commission, in its discretion, to revoke the license."

[189] Rule 15, Order No. 18, Governing Automobile Transportation, Adopted October 21, 1919.

[190] Emerick Motor Bus Line Co. v. Bellefonte Cent. Transp. Co. (Pa.) P.U.R.1920E, 380.

[191] Rule XVI., Rules and Regulations of the Utah Public Utilities Commission, Governing Automobile Stage Lines, effective Jan. 1, 1918.

have not been given jurisdiction over them, and local consent may be required in addition to Commission permission. It has been held in Alabama that a corporation, operating motor cars for transportation of passengers between and in towns, may be required to take out a license to operate in the streets of one of such towns although it has been licensed at its principal place of business.[192]

Under a California statute, Laws 1917, chap. 213, regulating the operation of automobiles, stages, and trucks, permission must first be obtained for the operation of such vehicles between fixed termini or over defined routes, from the local authorities, over whose highways it is proposed to operate except as such operation was being carried on in good faith on May 1, 1917.[193] But the purchaser of an automobile stage line, which was in operation prior to that time, must obtain permits from the local authorities before he can continue to operate the purchased property.[194]

It has been held that motor vehicle operators in the District of Columbia should secure the usual licenses from the assessor as provided for by par. 14, § 7, of the Act of Congress approved July 1, 1902, where applications to operate result from conditions incident to a strike of motormen and conductors on a street railway, and where no permanent route is to be established.[195]

In Massachusetts, local licenses are required of automobile carriers.[196] The operation of a bus line between two cities in competition with another carrier without the consent of the local authorities, is unlawful in New York.[197] It goes without saying that the authority to operate jitneys over city streets must be by valid franchise.[198] But a state or town license to operate

[192] Opbyke v. Anniston (Ala.) 78 So. 634.

[193] Re Transportation Co. (Cal.) P.U.R.1918B, 297; Re General Motor Transp. Co. (Cal.) P.U.R.1918C, 320; Re Macdoel Teleph. Co. (Cal.) P.U.R.1921C, 636.

[194] Re Fuller (Cal.) P.U.R.1918E, 793.

[195] Re Motor Vehicles (D. C.) P.U.R.1918C, 320.

[196] Section 46, chap. 159 of the General Laws of Massachusetts.

[197] Public Service Commission v. Mt. Vernon Taxicab Co. 101 Misc. 497, P.U.R.1918C, 320, 168 N. Y. Supp. 83.

[198] Memphis Street R. Co. v. Rapid Transit Co. 138 Tenn. 594, P.U.R. 1918C, 320, 198 S. W. 890.

an automobile for hire undoubtedly does not authorize operation in violation of the provisions of a state public service act.[199]

In discussing the nature and effect of a local consent, Commissioner Irvine, of the former New York Commission, Second District, rendering the majority opinion of the Commission, said: "We do not think that the municipal consent to the operation of a stage route required by chapter 667 of the Laws of 1915, is a franchise within the meaning of the Second-Class Cities Law. It involves no permanent structures, and no permanent occupation of public property. It involves merely the operation of vehicles over public streets improved and maintained for the purpose of vehicular traffic, an operation that would be entirely lawful without municipal consent, except as this statute requires such consent for this particular purpose. It is not a grant of any public right. It disposes of no public property by sale, lease, or otherwise, nor does it surrender or delegate any sovereign or governmental right. It merely permits what, in the absence of restrictive legislation, would be a normal and lawful use of a public highway."[200]

The ordinance of the city of Fort Worth, the validity of which was attacked in the Auto Transit Company case, provided that any person desiring to operate a motor bus within the city must file with the city secretary an application in writing giving certain information including the type of the motor car or motor bus, the horse power thereof, the factory number, the county license number, the seating capacity, the name and age of each person to be in the immediate charge thereof as driver, whether such proposed driver uses drugs, intoxicating liquors, or has been convicted of violating any traffic ordinance of the city, the termini between which such motor bus is to be operated, the street or streets over which it is to be run, and further provided that upon the filing of such application for license it should be referred to the city commission, which board might, for sufficient

[199] Public Utilities Commission v. Garviloch, 54 Utah 406, P.U.R.1919E, 182, 181 Pac. 272; Re Woodlawn Improv. Asso. Transp. Corp. (N. Y. 2d Dist.) P.U.R.1916D, 1.

[200] Re Troy Auto Car Co. (N. Y. 2d Dist.) P.U.R.1917A, 700.

reasons designated in the ordinance, refuse to grant the application and issue the license thereunder.[201]

A license to operate a public automobile under an ordinance prescribing regulations prior to the advent of jitneys was held not to authorize the operation of a jitney under a subsequent ordinance prescribing more stringent regulations for such vehicles and charging a greater license fee.[202] Before operating an auto stage in the state of Utah, the owner or person lawfully in control thereof shall secure a license or licenses as may be required under the ordinances of any county or city within the state in which the motor vehicle is to be operated.[203]

d. Physical condition.

The Maryland Commission requires that motor vehicles shall be in proper physical condition for operation. Before a motor vehicle, for which a permit has been issued under the provisions of its rules, can be placed in operation, inspection thereof must be made, whenever practicable, by a representative of the Commission. Applicants for permits are informed at the time of making application whether such preliminary inspection will be required. All motor vehicles engaged in public transportation and the equipment used in connection therewith must at all times be kept in proper physical condition to render safe and adequate and proper public service, and so as not to be a menace to the safety of occupants of such vehicles, or of the general public. Failure to keep such motor vehicles in such condition aforesaid is a sufficient ground for the revocation or suspension of such permit.[204] Representatives of the Commission authorized to make such inspections are provided with appropriate badges for identification. They have the right at any time to enter into or upon any motor vehicle to which the rules of the Commission are applicable for the purpose of ascertaining whether or not the same have been violated. Wilful refusal of the operator of any such motor vehicle to stop the same when ordered to do so

[201] Auto Transit Co. v. Ft. Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[202] Ex parte Sullivan, 77 Tex. Crim. Rep. 72, P.U.R.1915E, 441, 178 S. W. 537.

[203] Rules and Regulations Governing Automobile Stage Lines (Utah) III.

[204] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 21.

by any such representative of the Commission, or to permit any such representative to enter into or upon the same for the purposes aforesaid or to display the permit issued for such motor vehicle upon his demand is a sufficient ground for the revocation or suspension of such permit.[205]

In Maine, the Commission has provided that motor vehicles must be kept in safe and proper condition for operation. The brakes and steering gear must be examined by a competent person before the car is put in service, and at least once a month thereafter.[206]

e. Equipment.

The California Commission requires all jitneys to be equipped with satisfactory brakes, to be maintained in good condition, and with a breaking power sufficient to lock the rear wheels of the vehicle when brakes are applied and the vehicle operated at speed of 10 miles per hour; with a standard speedometer maintained in good working order; with a suitable horn or other similar warning device; with at least one extra serviceable tire when leaving either terminus; with a set of skid chains to be applied to the rear wheels whenever necessary to prevent skidding; and with a liquid fire extinguisher of a design or type approved by the Commission, such extinguisher to be kept in satisfactory operative condition at all times.[207]

No motor bus can be ordered or purchased for service in the District of Columbia until its plans and specifications have been approved by the Commission, except that motor vehicles equipped with passenger bodies of the touring, sedan, or limousine type furnished as standard equipment by the manufacturers may be so purchased; and no material change in equipment, plan, or arrangement may be made on any motor bus in service without Commission approval. All closed busses in service must be equipped with electric lights so located as to provide for well distributed illumination of the interior, platforms, and steps of such busses. Such lights must be kept lighted at night and at all

[205] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 23.

[206] Rule 10, Rules and Regulations of the Maine Commission Governing Motor Vehicles, effective July 9, 1921.

[207] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

other times when the lack of such illumination may result in danger or discomfort to passengers. Shades or screens may be provided to protect the driver from back glare if so arranged that they will not obstruct the proper illumination of the door sill and step. Between November 1st and April 1st of each year all closed busses in service must be equipped with suitable heating apparatus. The temperature within any closed bus in service must not be allowed to fall below 40 degrees, Fahrenheit, above zero, except when the company is prevented from so doing by accident or other controlling emergency for which it is not responsible and which is not due to any negligence on its part. Motor vehicles equipped with passenger bodies of the touring, sedan, or limousine type furnished as standard equipment by the manufacturers, are exempted from the above provisions. Every closed motor bus in service having a front entrance door is required to be equipped with an emergency rear exit door so constructed that it will remain securely fastened during normal operation but may be opened readily from within by passengers in case of emergency.[208]

In Maine, each driver must carry in the motor bus of which he is in charge, a full set of nonskid tire chains, which must be kept in good condition, ready to be placed on the wheels when the condition of the roads or streets suggests their use.[209]

Under the rules of the Maryland Commission, it is the duty of the owner, or person or persons, association, or corporation lawfully in possession of motor vehicles to which the rules of the Commission apply, to maintain sufficient reserve equipment to ensure the reasonable maintenance of the routes established, and schedules fixed therefor.[210]

The Oregon Commission requires every motor vehicle to be equipped with a standard speedometer, to be maintained in good working order, with satisfactory brakes, to be maintained in good condition, with a braking power sufficient to lock the rear wheels, when fully applied at a speed of ten miles per hour; with skid chains, and with a suitable horn or other similar warn-

[208] Section 6, in Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, Sept. 1, 1921.

[209] Rule 6, of the Rules and Regulations of the Maine Public Utilities Commission Governing Motor Vehicles, effective July 9, 1921.

[210] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 20.

ing device. Passenger vehicles must also be equipped with a liquid fire extinguisher of a design and type approved by the Commission, such extinguisher to be kept in satisfactory operative condition. Passenger vehicles with a covered top or top up must maintain a light or lights of not less than two candle power each within the vehicle, and so arranged as to light up the whole of the interior of the vehicle between the hours of sunset and sunrise, at all times when vehicles are occupied by passengers.[211]

In Pennsylvania, all holders of certificates operating taxicabs, are required to have their cars equipped with taximeters in plain sight of passengers, and, in addition thereto, the schedule of rates is required to be posted in a conspicuous place inside the body of each taxicab.[212]

The Fort Worth ordinance, which has several times been mentioned, prohibited the running of motor busses between sun down and sun up without lights.[213]

In Utah, every automobile corporation is required to furnish such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and to maintain sufficient reserve equipment to insure reasonable regularity of service; nonskid chains must be provided during rainy weather, or upon slippery roads; every motor vehicle is to be equipped with a mirror or other device to enable the driver to have a clear and unobstructed view of the rear; each vehicle is required to have firmly and permanently attached to the front thereof a sign with letters and figures not less than four inches in height, designating the route over which the vehicle is being operated; every motor vehicle is required to carry at least two white front lights, of standard power and construction, as provided in Laws of Utah, 1917, chapter 91, § 7, and one red light on the rear, and no vehicle is to leave its terminus on any trip requiring traveling after one hour after sunset, or before one hour before sunrise,

[211] Rules 2–7, Order No. 798, issued January 13, 1922.

[212] Rule 12, Order No. 18, Governing Automobile Transportation, adopted October 21, 1919.

[213] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

without its lighting system in proper condition; and every motor vehicle must be provided with good and sufficient brakes, and with suitable bell, horn, or other signal.[214]

It is provided in Washington that all motor vehicles used in the transportation of passengers and having a covered top or top up, shall maintain a light or lights of not less than two candle power each within the vehicle and so arranged as to light up the whole of the interior, except that portion occupied by the driver, and such light or lights must be kept constantly lighted between the hours of sunset and sunrise when the vehicle is occupied by passengers. All motor vehicles used in the transportation of passengers when leaving a terminus, must be equipped with at least one extra serviceable tire, with a standard speedometer maintained in good working order, with a suitable heating system sufficient to keep the same reasonably comfortable for its patrons, and with a fire extinguisher of a design or type approved by the Department, such extinguisher to be kept in satisfactory operative condition at all times. Sufficient reserve equipment must be maintained by all auto transportation companies to insure the reasonable maintenance of established routes and fixed time schedules.[215]

No motor vehicle is permitted to leave its terminus on any trip requiring traveling after one half hour after sunset, or before one half hour before sunrise, unless its lighting system is in proper condition. Should the lighting system become defective or out of order the vehicle must be brought to a stop at a point off the line of travel of the roadway, and the driver must not proceed until the defect is remedied.[216]

f. Indemnity bonds and insurance.

Persons engaging in automobile transportation should be required to file an indemnity bond or policy in order to insure responsibility. After an early investigation of automobile transportation, the Arizona Commission required the filing in the

[214] Rules and Regulations Governing Automobile Stage Lines (Utah) XI.

[215] Section 8, Rules and Regulations of the Department of Public Works of the state of Washington.

[216] Section 9, Rule 74, Rules and Regulations of the Department of Public Works of Washington.

office of the Commission a bond approved by the Commission in the sum of $2,500 for each car in use. The bond was required to be made payable to the state, and conditioned "that the principal thereof shall well and truly observe, obey, and perform all and singular the duties, requirements, restrictions, obligations, rules, and regulations which are herein and which may be hereafter imposed upon him, it, or them by this Commission.[817] In that state, motor vehicle carriers must take out insurance policies in some company legally authorized to do an indemnity insurance business in the state, which must contain the following conditions:

"(1) The insurer (the insurance company) shall agree to indemnify the insured (the carrier), within the limits specified in paragraphs (3) and (4) of this section, against any loss which he (the insured) may sustain, by reason of the liability imposed upon him by law, for bodily injuries, including death resulting therefrom, suffered by any person through any accident resulting from the unlawful or negligent operation or the defective construction or condition of any motor vehicle operated by him (the insured) or any of his agents, officers, or employees while such person, at the time of such accident, was a passenger in such motor vehicle.

"(2) That when any final judgment has been entered in any court of record in this state against the insured for damages awarded to any person that may have been accidentally injured, or to the legal representative of any person that may have been accidentally killed, through the defective construction or condition of any motor vehicle, or through the unlawful or negligent operation or management thereof by the insured or any of his agents, officers, or employees, while such person, at the time of such accident, was a passenger in such motor vehicle, he (the insured) shall be deemed to have suffered a loss under the policy or contract of insurance, and such loss shall be paid to the plaintiff in the action by the insurer in satisfaction of such judgment, at any time before execution shall issue thereon, unless the insured shall in the meantime pay such judgment or give a bond to secure its payment. In such case, the insurer shall be deemed

[817] Re Automobile Traffic (Ariz.) P.U.R.1915C, 945.

the special agent of the insured to make payment of the amount of such judgment; and the agency so created shall not be subject to revocation, except by and with the consent of the insured."

The total liability of the insurer for any one accident must be limited to $5,000 and the total liability for injury or death to more than one passenger in one accident, to $10,000. Every vehicle is subject to a separate policy which must be filed with the Commission.[218] The Commission has since provided that the policy shall indemnify the assured against loss due to personal injury suffered by any person not employed by the insured due to operation of the motor vehicle. The conditions specified are as follows:

"The liability of the insurance or indemnity company for loss from any accident resulting in bodily injuries to, or in the death of one person shall not be less than the sum of $5,000 and subject to the same limit for each person, the said company's total liability for loss from any one accident resulting in bodily injuries to or in the death of more than one person shall not be limited in an amount less than $10,000. The policy shall contain a provision that the assured shall, upon the occurrence of an accident, give immediate written notice thereof with such information as may be obtainable at the time of such accident, to such office or agent of the insurance company as may be designated in its policy. Each and every car used in the public service as herein described shall be covered by a separate policy, the car being described by name, factory number, type of motor, style of body, year built, kind of power used and such other information as will clearly identify the car." [219]

The Commission has ordered companies and agencies issuing indemnity bonds or policies of contract of insurance, to cease issuing such bonds, policies, or contracts to operators not in possession of certificates of convenience and necessity. The Arizona Commission has wider powers over corporations in general than the state Commissions of most of the other states.[220]

As a condition of Commission approval of motor bus operation, the Public Utilities Commission of the District of Columbia

[218] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52, 53.
[219] Order No. 74–A, August 18, 1920.
[220] Order No. 68–A, February 4, 1920.

provided that the operating company should execute an indemnity bond in the sum of $5,000 with the surety of a bonding company, conditioned to pay the final judgment obtained against the company for any injury to person or property, or damage for causing the death of any person, by reason of any negligent or unlawful act on the part of the company, its agents, employees or drivers, in the use or operation of any of the vehicles of the company.[221]

Every public utility operating motor vehicles is required to file with the Illinois Commission a sworn statement regarding ability to pay damages resulting from accidents due to the negligent use or operation of the vehicle or to file security, indemnity, or bond guaranteeing the payment of all such damages, or to insure to a reasonable amount its ability to pay such damages, the statement, security, or indemnity bond or amount of insurance to be subject to the approval of the Commission; but the motor vehicle operator is given the right to file a petition in the circuit court requiring the Commission to approve such statement, security, or indemnity bond or amount of insurance and the court may so order if the equities and exigencies require.[222]

In Massachusetts, motor vehicle operators are first required to obtain a license from the municipality in which they intend to operate. The licensee must deposit, with the treasurer of the town, security by bond or otherwise running to the town treasurer and approved by him and by the licensing authority in such sum as the licensing authority may reasonably require, conditioned to pay any final judgment obtained against the principal named in the bond for any injury to person or property or damage for causing the death of any person by reason of any negligent or unlawful act on the part of the principal named in the bond, his or its agents, employees, or drivers in the use and operation of the vehicle. Any person so injured or damaged, or his executor or administrator, or the executor or administrator of any person whose death was so caused, may enforce payment

[221] Re Ultimate Sales & Service Co. Order No. 454, Formal Case No. 106, Dec. 29, 1921.

[222] Sections 55a–55c, Illinois Commerce Commission Law, effective July 1, 1921, and Re Rules and Regulations Governing Motor Vehicles, General Order No. 68, July 28, 1921.

of such judgment by suit on the bond in the name of the town treasurer. Such a bond is required to be furnished in each town in which the motor vehicle is licensed to operate.[223]

Automobile common carriers are required to file and keep in force with the Nevada Commission an indemnity bond approved by the Commission in an amount not less than $500 nor more than $10,000 for the purpose of reimbursing passengers or shippers for loss or damage or personal injuries caused by the neglect of said carrier, its owner, operator, agent, or employee.[224]

Within thirty days after permission has been granted to operate a jitney line in New Hampshire, the licensee must file with the Commission a sufficient bond with at least two sureties in the penal sum of $500 for each motor vehicle to be operated and $100 additional for each passenger permitted to be carried conditioned upon the payment of damages due to negligent operation. Any surety company authorized to do business in the state is accepted as surety. Instead of a bond, the licensee may file a liability policy of any surety authorized to do business in the state in the same amount.[225]

Any grant of permission by the New Hampshire Commission for the operation of motor vehicle transportation is required to be conditioned, "upon the petitioner filing, within thirty days after the date of such order or within such longer time as may be specified in said order, and thereafter keeping in full force and effect a good and sufficient bond in such form and with such sureties as may be approved by the Commission, providing for the payment of damages caused to any person or property through any default or negligence in the operation of any such motor vehicle, said bond to be in a penal sum equivalent to $500 for each motor vehicle to be operated and the additional amount of $100 for each passenger permitted to be carried therein; and no such motor vehicle shall be operated unless such bond shall have been filed and kept in full force and effect. The bond required by this section shall be deemed to include any

[223] Section 46, chap. 159 of the General Laws of Massachusetts.

[224] Nevada Public Service Commission Law, chap. 109, Stats. 119, § 18. See also General Ruling, No. 3 (Nev.) P.U.R.1919C, 922.

[225] Rule 10, Rules and Regulations of New Hampshire Commission, governing jitneys, May 28, 1919.

policy of insurance or indemnity by which the insuring company shall assume the liability defined by this section; provided that such company is authorized to do business in this state." [226]

The Oregon Commission has provided for the following bonds and liability insurance:

"*Good Faith Bond:* Surety bond, satisfactory to and approved by the Commission, in the penal sum of $1,000, conditioned upon the payment of all fees or charges which may be due the state under any permit of operation, and for the faithful carrying out of any permit granted by said Commission.

"*Liability insurance or indemnity bond:* 1. All companies or individuals engaged in the transportation of persons shall file with the Commission good and sufficient liability insurance or indemnity bonds in the amounts and under the conditions recited below:

"(a) For each vehicle used, the seating capacity of which is twelve passengers or less (including driver). For any recovery for personal injury by one person, $5,000; and not less than $10,000 for all persons receiving personal injury in any one accident; and in addition thereto, the sum of $1,000 for damage to property of any person other than the insured.

"(b) For each vehicle used, the seating capacity of which exceeds twelve but not more than eighteen passengers (including driver): For any recovery for personal injury by one person, $5,000; and not less than $20,000 for all persons receiving personal injury in any one accident; and in addition thereto the sum of $1,000 for damage to property of any person other than the insured.

"(c) For each vehicle used, the seating capacity of which exceeds eighteen passengers (including driver): For any recovery for personal injury by one person, $5,000; and not less than $25,000 for all persons receiving personal injury in any one accident; and in addition thereto the sum of $1,000 for damage to property of any person other than the insured.

[226] New Hampshire Laws of 1919, chap. 86, § 2.

"All companies or individuals engaged in the transportation of property (freight or express) shall file with the Commission good and sufficient liability insurance or indemnity bonds as follows:

"For each motor vehicle used, of whatsoever tonnage capacity; for any recovery for personal injury by one person, $5,000; and not less than $10,000 for all persons receiving personal injury in any one accident; the sum of $1,000 for damage to property of any person other than the insured; caused by such vehicle, and cargo or merchandise insurance, on the goods *en route* or being transported, or in possession as a baillie for hire, in the sum of $1,000.

"The following provision must be endorsed on each indemnity bond or liability insurance policy hereinbefore provided for:

" 'The company, meaning the surety, hereby agrees to make compensation for injuries to persons and loss of or damage to property, resulting from the operations of the vehicle referred to in this policy.'

" 'It is also understood and agreed, that this policy cannot be canceled by the assured, or the company, without first giving fifteen days' notice to the Public Service Commission of the state of Oregon.' " [227]

The Pennsylvania Commission requires all applicants and holders of certificates to show either financial responsibility or the protection of liability and indemnity insurance, the amount of insurance to be fixed in each case according to the judgment of the Commission.[228]

In Texas, ordinances generally require persons operating motor busses within the limits of a city to furnish a bond, and sometimes provide that individuals offering themselves as sureties comply with certain requirements in respect to proof establishing their solvency.[229]

Every motor vehicle used by an auto transportation company

[227] Order No. 797, Rules and Regulations governing bonds and insurance, issued January 13, 1922.

[228] Rule 10, Order No. 18, Governing Automobile Transportation, adopted October 21, 1919.

[229] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

in the state of Washington must be covered by liability and property damage insurance or a surety bond filed with the Department of Public Utilities, in the sum of $5,000 for any recovery for personal injury by one person and not less than $10,000 for all persons receiving personal injury by reason of one act of negligence, on all motor vehicles used in the transportation of property and on passenger vehicles of twelve passengers capacity or less; not less than $15,000 on vehicles of thirteen to twenty passengers capacity inclusive; and not less than $20,000 on vehicles of over twenty passengers capacity and, in addition thereto, the sum of $1,000 for damage to property of any person other than the assured.[230]

It is provided by a statute in Wisconsin that no person, firm, or corporation shall operate any motor vehicle for the purpose of common carriage, "unless there shall have been filed with and accepted by the Railroad Commission of Wisconsin a good and sufficient indemnity bond issued by some surety or indemnity company created under the laws of the state of Wisconsin or duly authorized to transact business therein, which said bond shall describe such vehicle by factory number, maker's name, number of passengers capable of being accommodated therein at one time, and number of state license under which the same is operated (which said license number, when changed by the issuance of a new state license, shall be indicated upon said bond by the attachment of a rider thereto); said bond shall provide that the company issuing the same shall be directly liable for, and shall pay, all damages, not exceeding $2,500 to any one person, or $5,000 for any one accident that may be recovered against the operator of the vehicle described therein by reason of the negligent use and operation of such vehicle." [231]

The California Commission has stated that it believes a regulation regarding bonding by jitneys should provide that a bond or agreement might either be provided separately for each vehicle, or one aggregate bond or agreement covering the entire business of the company, and that the original bond or agreement should be filed with the municipality or county authorities at

[230] See chapter 111, Session Laws, 1921 of Washington, and § 7, Rule 45, Rules and Regulations, Department of Public Works of Washington.

[231] Laws of 1915, chap. 546, § 1797–63.

either terminus of the transportation company's route, and that a duplicate thereof should be filed in each of the other municipalities and counties through which the transportation company would operate. The Commission said: "We believe that the amounts, terms, and conditions and regulations for the filing of bonds and indemnity agreements should be made uniform. It appears to us, however, that this uniformity is not best attained by having bonds and indemnity agreements filed with the Railroad Commission. The character and responsibility of the sureties, who go upon these bonds or agreements, can best be determined in the locality in which they are made; and, if it becomes necessary to inspect or sue upon the bond or agreement, the same should be available in the locality to which they apply. For these reasons, among others, it would be impracticable to have all these bonds and agreements filed with the Railroad Commission."[232]

A municipal requirement of a one thousand dollar bond to be provided by jitney operators has been held valid in Massachusetts.[233] And in Iowa, an ordinance requiring owners of jitneys to furnish indemnity bonds of $2,000 against negligent operation has been held not to deprive them of their property without due process of law, not to be unjustly discriminatory and in restraint of trade.[234]

Ordinances requiring operators of jitney busses to secure an indemnity bond of $5,000 have been upheld.[235] And a municipal ordinance requiring the owners of jitney busses to give a bond in the sum of $10,000 conditioned upon the payment of all damages resulting to persons or property from the negligent operation or defective construction of the jitney busses, or from violation of law, and the keeping in force an insurance policy for that amount, was held to be reasonable.[236]

It has also been held that a requirement that a jitney operator procure an indemnity bond from an insurance company is not

[232] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

[233] Commonwealth v. Slocum, 230 Mass. 180, 119 N. E. 687.

[234] Huston v. Des Moines, 176 Iowa 455, P.U.R.1916D, 7, 156 N. W. 883.

[235] Hazleton v. Atlanta, 144 Ga. 775, P.U.R.1916D, 7, 87 S. E. 1043; Le Blanc v. New Orleans, 138 La. 243, 70 So. 212.

[236] Ex parte Cardinal, 170 Cal. 519, P.U.R.1915E, 282, 150 Pac. 348.

unreasonable or oppressive in not permitting him to procure a bond from an individual.[237]

g. Signs and marks of identification.

In Connecticut, every jitney must carry markers to be furnished by the motor vehicle commissioner, which markers must indicate that the vehicle is licensed for the jitney service.[238]

All motor busses in service in the District of Columbia are required to comply with police regulations, and, to carry on each side of the bus in letters not less than two inches high and with a stroke width of not less than one-fourth inch, the name of the individual or corporation operating the bus; and on each side and on the rear of each bus, in numerals not less than four inches high and with a stroke width of not less than one-half inch, a number which will serve to distinguish such bus from any other bus or busses operated by said individual or corporation, but it is provided that this provision shall apply to such vehicles only where two or more thereof are operated by the same individual, company, or corporation.[239] All motor busses in operation are required to display on the front end a destination or route sign or both, which must be clearly legible, both day and night. The location and type of such sign must be approved by the Commission. Every motor bus in operation must carry within the body, where it may easily be seen by passengers, a sign indicating the maximum carrying capacity of such bus as fixed by the Commission, the letters and numerals in such sign to be not less than two inches in height and the width of stroke to be not less than one-fourth inch. All disabled, or special busses must carry respectively "no passengers" or "special bus" signs displayed on the front of the bus. All busses filled to capacity must carry a "bus full" sign. "Bus full" signs must be displayed at entrances so that they can be seen clearly by boarding passengers.[240] The Commission has provided that the

[237] Ex parte Sullivan, 77 Tex. Crim. Rep. 72, P.U.R.1915E, 441, 178 S. W. 537.

[238] Section 6, Connecticut Act, concerning Public Service Motor Vehicles.

[239] Section 6, in Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, Sept. 1, 1921.

[240] Section 4, in Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, Sept. 1, 1921.

names of terminal points of the route shall be plainly and conspicuously displayed on each vehicle so as to be easily read by prospective passengers.[241]

It has been held in Iowa that an ordinance requiring jitneys to display the city license number in addition to the one required by the state is a valid regulation.[242]

In Maine, the number of the license issued by the Commission must be legibly painted or displayed in plain view on the side of the motor bus.[243]

In Maryland, all motor vehicles to which the rules of the Commission are applicable must be equipped with legible signs on each side, or if specfically authorized, or prescribed by the Commission, on the front thereof, indicating the respective termini of their routes, or the name of the street, road, or other public highway forming the greater part of such route.[244]

In Pennsylvania, automobiles or auto busses employed in common carriage, are required to have painted on each side in letters large enough easily to be read by the public, in three separate lines, the following information:

(a) Name of person or company to whom certificate is issued.

(b) The word "Auto bus."

(c) P. S. C. Certificate No. —.[245]

The ordinance in the Forth Worth case required a sign or painting showing both the destination and the route to be prominently displayed on or attached to the motor bus. It also prohibited the driving or operation of a motor bus without the display of a city license number on the rear of the bus.[246]

In Washington, each motor vehicle must have permanently attached to the front thereof a sign with letters and figures not

[241] Re Rates of Fare on Motor Vehicle Lines (D. C.) Order No. 238, P. U. C. No. 209712, January 2, 1918.

[242] Huston v. Des Moines, 176 Iowa 455, P.U.R.1916D, 7, 156 N. W. 883.

[243] Rule 2, Rules and Regulations of the Maine Public Utilities Commission Governing Motor Vehicles, effective July 9, 1921.

[244] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 7.

[245] Rule No. 4, Order No. 18, Governing Automobile Transportation, Adopted October 21, 1919.

[246] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

less than four inches in height designating the route over which the vehicle is being operated.[246a]

IX. Grounds for granting and refusing certificates of convenience and necessity.

a. In general.

Commission policy with reference to the grant or refusal of certificates of convenience and necessity is governed by the purpose of securing safe and adequate service for the public and of protecting companies rendering such service from wasteful competition. The statutes were undoubtedly passed in the first instance to protect street railways from the jitney, and afterwards expanded as the importance of automobile transportation grew. The policy is pretty well settled as to an applicant seeking to enter a field already occupied. What should be the rule as between applicants seeking the right to occupy the same field? It has been held in California that where there are several applications for permission to establish an automobile stage line in a given territory and only one certificate is to be granted, consideration should be given to the proposed rates of the applicants where each appears to be financially able and willing to establish the line in question and to make such schedules and additions to equipment as the requirements of travel may justify; and in such a case the Commission granted the certificate to the applicant proposing the more favorable rate.[247] So a certificate of convenience and necessity to operate motor busses on the south side in the city of Chicago, was denied by the Illinois Commission in one case and granted in another for the same service, the final decision, apparently, having been made on the theory that the company that could the more adequately serve the public, and the one best fitted, financially and by experience to do so, should be entitled to the certificate. Commissioners Lucey and Shaw, however, dissented on the ground that a motor bus company engaged in the transportation of passengers in city streets should not be considered a monopoly, and that a certificate should, therefore, have been granted

[246a] Section 8, Rules and Regulations of the Department of Public Works of the State of Washington.

[247] Re King (Cal.) P.U.R.1919F, 377.

to both applicants.[248] And in Washington, a certificate of convenience and necessity for the operation of auto busses to and from and within a national park was granted to a company which had established hotels, inns, camps, automobile, and automobile stage transportation for tourists within such territory, in preference to a taxicab company which had transported passengers and freight as the agent of the former company.[249]

The Arizona Commission will not issue a certificate of convenience and necessity to unorganized companies or to two or more persons operating under the same name unless organized in a manner that will definitely and legally fix responsibility.[250] The same rule is in force in Washington.[251] But a certificate of convenience and necessity should be granted to a corporation formed by individuals who have been operating automobiles in good faith within the meaning of § 4, chapter 111, of the Washington Session Laws of 1921.[252]

Operation in violation of the law and continuance to do so in defiance of an order of the Commission has been held a sufficient ground for the refusal of a certificate.[253] So the Arizona Commission has held that the fact that a company operated a stage line after its certificate of convenience had expired and after notice to cease operation, constitutes a good and sufficient reason for denying the application of the president of the company to operate in his individual capacity.[254]

b. Competition with street railways.

Competition of jitneys and motor busses with urban and interurban railroads has a very marked effect upon the revenues of the railroads. It has been held in Wisconsin that in determining an application by a street railway for increased rates, the loss of revenue from automobile competition may be taken into consideration as a factor affecting return.[255] Unrestrained com-

[248] Re Chicago Motor Bus Co. (Ill.) P.U.R.1918C, 320.
[249] Re Rainier National Park Co. (Wash.) P.U.R.1921E, 828.
[250] General Order No. 62–A, July 31, 1919.
[251] Section 3, Rule 9 of Rules and Regulations of the Department of Public Works of Washington.
[252] Re Barker Motor Bus Co. (Wash.) P.U.R.1921E, 836.
[253] Re Jones (Cal.) P.U.R.1921D, 684.
[254] Re Smith (Ariz.) P.U.R.1921C, 637.
[255] Re Duluth Street R. Co. (Wis.) P.U.R.1916D, 614.

petition of this sort would soon put the older forms of transportation out of business. A uniform urban street railway fare is the rule in the United States. This discriminates against the short distance riders, but is nevertheless favored as it has a tendency to prevent the congestion which would result from a mileage basis of charges and to encourage a healthful growth of cities, and the spread of residences into uncramped districts where there is more chance to breath and move about. But to be able to do this, the railways must have the benefit of the patronage of the short distance rider, as the long distance rider must often be carried at a loss. The effect of jitney competition is to deprive the railways of this needed patronage. Motor transportation might so operate as to require an increase in street railway fares, or prevent any decrease in such fares. Among other reasons for refusing to reduce street railway fares, the Wisconsin Commission has mentioned the increasing competition of private and public motor vehicles.[256]

The Michigan Commission authorized a street railway operating in the cities of Muskegon and Muskegon Heights, to discontinue operation, unless these cities would eliminate jitney competition along lines traversed by the street railway company. The company showed that it had operated at a loss, that on account of jitney competition it was running behind each month, and that the number of passengers carried was about 1,000,000 less per year than a year or two before. The Commission stated that the continuance of street railway service in these cities was "absolutely necessary to the continued prosperity of said cities." The Commission also said that it did not believe that the jitneys and automobiles were equipped or qualified to render adequate service on any of the lines or streets occupied by the street railway company and that in view of the fact that the cities of Muskegon and Muskegon Heights had seen fit to permit jitneys and automobiles to compete with the street railway company, the street railway company should not be required to operate permanently and ought to be permitted to cease such service in the near future unless its financial situa-

[256] Rudolf v. Southern Wisconsin R. Co. (Wis.) P.U.R.1916E, 1074.

tion should be improved, such improvement being possible through the elimination of jitney and automobile competition.[257]

In an early New York motor bus case, it was said that electric railways, beyond any question, were entitled to protection up to a certain point. "It was one of the wise and just provisions of the Public Service Commissions Law," said Commissioner Emmett, "to vest in the Commissions requisite authority to prevent wasteful and unprofitable competition between privately owned enterprises engaged in any public utility field. The reasons for doing this were obvious. The people of New York state, in their collective capacity, have not as yet seen fit to engage largely in any form of government-operated utility enterprise. Individual courage, energy, foresight, and a willingness on the part of private investors to risk large sums in bringing modern conveniences within the reach of all men,—these have been the only agencies through which, speaking generally, it has hitherto been possible for the people of the state of New York to enjoy the benefits attaching to such necessaries of modern life as improved transit, lighting, telephonic, and telegraphic facilities. Great financial hazard to the promoters of privately owned public utilities mark the pioneer period of nearly all these enterprises. Any popular idea there may be to the effect that those who were first in these fields invariably reaped large returns is a mistaken one. The history of railway receiverships, and indeed of those dark days in the lives of all public utilities when the public was slowly waking up to the realization that it would be worth its while to avail itself of the new facilities, will amply refute any such idea. Doubtless, therefore, when it passed the Public Service Commissions Law, the legislature included among its provisions the one we are here discussing very largely from a sense of fairness to the private interests already engaged in these fields of work. But the chief consideration must have been a realization that, without some such protective provision in the law, the public itself would be the ultimate sufferers from ill-regulated and wanton competitive conditions. It was plain that under such conditions none of the competitors in any given field could hope to enjoy the degree of financial ease and pros-

[257] Re Muskegon Traction & Lighting Co. D–1333, Nov. 9, 1921.

perity which in the long run is absolutely essential if good service is to be given. After the money first invested in launching a public service enterprise has gone, the only condition upon which more money can be obtained is that the enterprise shall be a financial success. More money, and still more money, is a constant need in connection with all public utility establishments, if they are to keep abreast of modern scientific progress, and if the scope of the original enterprise is to be extended so that multitudes of people may in the end share its advantages. The check upon unwise competition which the Public Service Commissions Law enables the Commission to exercise is, therefore, abundantly justified, we think, from the point of view of public advantage alone. The power has been made use of more than once in what seems to have been the best interest of the people of the state." [258]

Except in cases where the existing street railway system cannot or will not supply the reasonable requirements of a community, it was held that the use of jitneys ought to be confined to streets and neighborhoods which have no electric railway readily available.[259] The Commission afterwards affirmed its position as above set forth, stating that street railways require for their operation large capital investments and that the law obliges them to pay a large portion of the expense of constructing and maintaining street improvements and that, therefore, those who embark their money in such enterprises are entitled to reasonable protection in the public interest.[260]

It has been held that the duty to protect the existing investment of transportation companies from wasteful competition, must be subordinated to the primary duty to the public, if they conflict, upon an application for a certificate of convenience and necessity to operate a motor bus system in a city in which street railways operate; and the fact that it may be more pleasant to travel in a motor bus than in a street car, or vice versa, may be given some consideration in passing upon an application for a certificate of convenience and necessity for the operation of a motor bus system in a city in which street cars are operated.[261]

[258] Petition of Gray (N. Y. 2d Dist.) P.U.R.1916A, 33.
[259] Re Ashmead (N. Y. 2d Dist.) P.U.R.1916D, 10.
[260] Re Troy Auto Car Co. (N. Y. 2d Dist.) P.U.R.1917A, 700.
[261] Petition of Gray (N. Y. 2d Dist.) P.U.R.1916A, 33.

An additional reason given in support of the policy of protecting electric railways from ruinous jitney or motor bus transportation is that the latter form of service is not adequate for the needs of the public. The Oregon Commission, in considering an application for increased street railway fares, said: "A very comprehensive study, concerning the practicability and economy of bus line transportation was submitted in this case, and testimony upon this subject shows convincingly that adequate bus line transportation sufficient to meet the needs of the city of Portland would be neither practicable nor economical. Even on the more profitable lines of traffic, it appears that the cost would equal, if not exceed, that of the street railway, and because of the narrowness of Portland's streets the congestion of traffic, which would be occasioned thereby, would make it impracticable if not prohibitive."[262] In a case before the Pennsylvania Commission, Chairman Ainey, said: "There are now constructed and in operation automobiles adapted to public service which are both safe and convenient; but we are not convinced that automobiles of small size, many of them second-hand (the operators of which are neither prepared nor willing to render service in all kinds of weather and at all seasons of the year), can in all cases meet the public demand for transportation on a sufficiently safe, permanent, and stable basis so as to warrant the Commission in accepting them as satisfactory substitutes for street car service."[263] And a threat by the mayor of a municipality that in case the Washington Commission should increase street car fares he would encourage unlimited jitney competition, was answered by the Commission with the statement that jitneys, under the most favorable conditions and under the strictest regulations are not a suitable or satisfactory means of city transportation. The Commission stated that while jitneys could perhaps drive the street car companies out of business and replace them, the majority of the citizens would not want jitney service to replace street car service.[264] So it is the well settled view of the Commission that it would be unwise to allow a superior form of transportation to be driven out by allowing an inferior form to compete with it for the cream of the traffic.

[262] Re Portland R. Light & P. Co. (Or.) P.U.R.1920C, 428.
[263] Allegheny Valley Street R. Co. v. Greco (Pa.) P.U.R.1917A, 723.
[264] Spokane v. Washington Water Power Co. (Wash.) P.U.R.1921D, 762.

In an investigation of all matters affecting the furnishing of street car service, the Wisconsin Commission, upon ascertaining that jitney service had seriously interfered with the revenues of the street railway company, directed a rerouting of jitney lines by restricting jitney service to territory not in direct competition with the territory served by the street railway company. The Commission stated that the jitneys were able to secure a large share of the short haul or largest paying traffic. The Commission also said that the law authorizing the Commission to grant permits for the operation of jitneys as additional means of transportation, was not enacted with the intention of merely permitting additional carriers which would in themselves in the end bring about poorer service on the whole to the public than was had by the public previous to the advent of the jitneys, but that the intent of the legislature was to provide additional and better service to the public, rather than to destroy an absolutely necessary service.[365]

Inability of a railway to maintain adequate service, would undoubtedly be a sufficient ground for allowing motor transportation competition, but it has been held that the operation of an auto bus for hire parallel to an electric railway between municipalities will not be allowed merely because of alleged inadequate railway service, since, if complaint is made against the service, the Commission can order it remedied.[366]

Public convenience and necessity for the operation of an auto bus line in competition with a street railway was held sufficiently shown where it appears that there is such a divergence of the routes and so much greater convenience afforded by the stage route that it may fairly be said that it supplies a want of the public not already adequately met.[367] Commissioner Carr, dissenting, asserted that where the lines of a traction company and bus routes are at the most not exceeding 952 feet apart, it is doubtful whether it could properly be said that this in and of itself makes the bus line a necessity. The Commissioner said: "There can be no dispute but what it becomes a great convenience, but this fact, standing by itself, is not sufficient to

[365] Re Wisconsin Gas & E. Co. (Wis.) P.U.R.1918E, 752.
[366] Southern Pennsylvania Traction Co. v. Hartel (Pa.) P.U.R.1917C, 627.
[367] Re Troy Auto Car Co. (N. Y. 2d Dist.) P.U.R.1917A, 700.

justify this Commission in depriving the existing carrier of an amount of revenue which may be just sufficient to enable it to earn a slight return on the value of the property which it used for the public benefit."

Routes for the operation of motor busses, in a city, that do not directly conflict with existing street car lines were held not to violate any right of the latter to protection from wasteful competition under the New York Public Service Commissions Law, although the busses will take traffic from the street cars by furnishing direct transportation to a large number of persons who have had no direct facilities.[268] And there was held to be no improper competition with a street railway by an auto bus line operating on a part of its route over a street on which the railway did not propose to build a line in the near future, and which was over 2,500 feet from the nearest railway line, and operating with but few passengers on the remainder of the route over streets traversed by or near railway lines.[269] In another case, it was declared that, the paralleling of street car tracks for a short distance by a proposed motor bus route in a city is not a ground for refusing to permit the establishment of the route, where the paralleling is but incidental and unavoidable and the route as an entirety avoids direct competition with the car line. But public necessity was held not to require the establishment of motor bus routes parallel to existing street car lines, upon the same streets, practically throughout their entire length, where the population in the portions of the city penetrated is not particularly dense, and the sections are inhabited largely by well-to-do people maintaining automobiles, although the routes would be a convenience.[270]

In Florida, an ordinance prohibiting the taking on or discharging of passengers within 700 feet of a street upon which a street railway operates, was held invalid and unreasonable.[271] And in the absence of objection by a railway company, motor bus operators were authorized, in a New York case, to carry passengers between a city and a town where the applicant pro-

[268] Petition of Gray (N. Y. 2d Dist.) P.U.R.1916A, 33.

[269] Re Woodlawn Improv. Asso. Transp. Corp. (N. Y. 2d Dist.) P.U.R. 1916D, 1.

[270] Petition of Gray (N. Y. 2d Dist.) P.U.R.1916A, 33.

[271] Curry v. Osborne, — Fla. —, 79 So. 293.

posed to charge for local passengers within the city the rate allowed by city ordinances to licensed hackmen.[272] In a Tennessee case in which an injunction was authorized against the illegal operation of jitneys in a municipality upon the application of a street railway company, the court suspended the granting of the injunction for a brief time in order to permit the city, if it so desired, to pass an enabling ordinance for jitney owners, so as not to discommode the people by the sudden withdrawal of this kind of service.[273]

c. Competition with steam railroads.

The policy with reference to granting certificates of convenience and necessity for automobile lines paralleling steam railroads will probably be the same as that with respect to competition with electric railways. If the steam railroad is rendering adequate service at reasonable rates, it will be protected; otherwise not. It has been held in California that a certificate of public convenience will be granted to an auto stage line to enter into competition with a railroad line between certain points where it is shown that the service rendered by the railroad company is unsatisfactory.[274] During the war, it was held that authorization of auto truck freight lines should not be denied on the ground of interference with the revenue of steam railroads and express companies while operated by the Government, where the Government had frequently asked that encouragement should be given towards the diversion of merchandise and package freight to motor trucks.[275]

An interesting question was presented in the Philippine Islands by the objection of jitney owners to the reduction of passenger rates charged by a Government subsidized railroad company. Among the arguments, the protestants advanced the objection that the Government subsidized the railroad, and this was answered by the railroad calling attention to the fact that the roadbed furnished for the jitney operation was furnished and maintained by the Government without any direct contribu-

[272] Re Paige (N. Y.) P.U.R.1916D, 5; Re Hubbard (N. Y.) P.U.R.1916D, 5.

[273] Memphis Street R. Co. v. Rapid Transit Co. 133 Tenn. 99, P.U.R. 1916A, 834, 179 S. W. 635.

[274] Re King (Cal.) P.U.R.1919F, 377.

[275] Re Spurr (Cal.) P.U.R.1918D, 105.

tion from the jitney operators for that purpose. The Commission held that the railroad company must be permitted to reduce rates to meet competition so long as the rates were clearly sufficient to meet the out-of-pocket expenses.[276]

d. Competition between automobiles.

As electric railways and steam railroads, rendering adequate service at reasonable rates, should be protected from automobile competition, so existing automobile lines rendering adequate service at reasonable rates should be protected from others desiring to enter the field. It has been held, for example, that persons operating automobile stage routes on regular daily schedules for the transportation of passengers and property for which there is a public demand, should be protected from competition by irregular operation by irresponsible persons;[277] that adequate service should not be disturbed.[278] So an application for permission to establish an automobile stage service was denied where it appeared that existing taxicab and livery service was adequate, and that the stage rates would be higher than the existing charges.

Under a general order of the Arizona Commission, no public carrier of passengers subject to the order is permitted to engage in the transportation of persons and their baggage between points from and to which a scheduled service is being performed by any other public carrier or carriers of passengers, at the same or a lesser compensation than that which obtains under the tariffs of such other carrier or carriers, unless it shall furnish substantially the same, or a better, service than that which is being furnished the public by such other carrier or carriers. According to the provisions of the order: "A transportation service to be considered substantially the same as another, should have the same number of vehicles in service, should have equal seating facilities, and should be operated under the same character of schedule, i. e., twice daily, daily, or daily except Sundays, as the case may be; and any scheduled service that is estab-

[276] Re Manila R. Co. (P. I.) P.U.R.1916B, 829.

[277] Re Bohn (Ariz.) P.U.R.1918B, 288; Re Automobile Stage Line (Ariz.) P.U.R.1918B, 292.

[278] Re Frost (Utah) P.U.R.1919E, 660.

lished at a later date, and is not substantially the same or better than a scheduled service established at an earlier date, between the same points and via the same route, shall, unless otherwise ordered by the Commission, be classed as rent service, and subject to the charges prescribed therefor." [279]

In a subsequent case, the Commission granted a certificate of convenience and necessity to a company proposing to operate a bus line in competition with a similar line already established between a large city and a popular park 1½ miles distant therefrom. The Commission said: "The conditions herein, however, are not parallel to those existing between towns or districts separated by a considerable distance and since it is clearly shown that there is no likelihood of competition reducing the earnings of the present operator to an unprofitable basis, it is evident that no injustice will result therefrom. Paved roads will certainly result in a material reduction in operating expenses and it is our opinion that there is ample business for two lines to operate on a reasonable profit to both." [280]

In California, in a proceeding to obtain a certificate of convenience and necessity to operate a jitney line, an affirmative showing must be made as to the public convenience and necessity to be served, and that the transportation facilities offered by existing authorized carriers are insufficient, unsatisfactory, or do not in any other manner meet the requirements and demands of the traveling public. Testimony should be offered also indicating the probable number of patrons desiring the additional service. [281] The mere desire of an applicant to enter the field as a common carrier of freight or passengers is not a sufficient or a conclusive showing that public necessity warrants such additional service. [282] The Commission will not authorize the establishment of an auto truck carrier in districts regarding which there is no showing of inadequate service, merely for the purpose of permitting the applicant to serve sufficient territory to make his operation profitable. [283] Nor is the mere possession of a United States mail carrying contract, imposing the necessity for com-

[279] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52, 56.
[280] Re Cactus Garage Sales Co. (Ariz.) P.U.R.1921C, 719.
[281] Re Wilson & Co. (Cal.) P.U.R.1920C, 635.
[282] Re Highway Transport Co. (Cal.) P.U.R.1921C, 719.
[283] Re Palo Verde & I. V. Transp. Co. (Cal.) P.U.R.1920C, 619.

pliance with a specified time of departure, an indication that public convenience and necessity require the operation of a stage line as a common carrier under the jurisdiction of the Commission.[284] Nor will a certificate to operate an auto stage service be granted merely for the purpose of affording a through service between the designated points, where existing lines render adequate service between intermediate points. The remedy for the adjustment of conditions which may not be desired by the public was held not to be the establishment of a competing line, thereby dividing the traffic to the extent that existing authorized lines are unable to render the character of service demanded by the public and required by the regulations of the Commission.[285]

In another California case, an applicant for permission to operate a competing auto truck and auto stage line based its application on the ground that it could transport passengers and property more swiftly and economically than could be done by the existing line but failed to offer any evidence to show that the existing facilities were inadequate or unsatisfactory. The Commission in refusing the application called attention to its rules requiring an affirmative showing to be made as to the public convenience and necessity for additional transportation facilities before a competing carrier will be authorized to operate over a route already adequately served.[286]

It has been held that the fact that it may sometimes be convenient to call upon a local man for special trips does not justify a Commission in authorizing him to compete with an existing automobile stage line in a territory which at best yields only comparatively small revenues for the existing service;[287] and that the fact that an auto transportation company has been unable on several occasions to handle all traffic offered is not sufficient to warrant the Commission in granting an application permitting competition, where it is shown that the existing company has taken all possible steps to observe the rules governing automobile stages, particularly with reference to overcrowding.

[284] Re Hoxie (Cal.) P.U.R.1920B, 671.
[285] Re Wilson & Co. (Cal.) P.U.R.1920C, 635.
[286] Re San Joaquin Light & P. Corp. (Cal.) P.U.R.1921A, 613.
[287] Re Lyman (Utah) P.U.R.1919B, 101.

In this case it appeared that the only result of granting the application would be to reduce complaint as to overload conditions in the time of peak loads, there not being sufficient business at other hours to justify the establishment of an additional line.[288]

In Washington, a certificate of convenience and necessity must be issued for additional service in a territory already served only when the existing auto transportation companies serving such territory will not provide service to the satisfaction of the Commission.[289]

The Philippine Islands Commission has no power to protect an automobile carrier from competition by preventing others from furnishing the same kind of service, but the Commission will protect the existing carrier from a reduction in rates by requiring all similar carriers to charge the existing rates until such rates have been changed in the manner provided by law.[290]

Manifestly, assuming that a Commission has jurisdiction over the question, it cannot consider an allegation that a reduced rate, voluntarily established by an auto stage company, has detrimentally affected a competitor, when such competitor's business shows an increase since the establishment of the reduced rate.[291]

As a measure of protection to automobile stage lines operating between fixed termini over a regular route, the Arizona Commission requires operators of "for hire" cars to charge 40 per cent in excess of established stage fares for service rendered over the route or between the termini of such lines. The purpose of protecting stage lines against competition of "for hire" cars is to compensate such lines for rendering regular service under adverse weather and road conditions and irrespective of the volume of traffic. The public is assured definite service at specific rates, regardless of conditions. But this requirement is held satisfied, if applied within the time schedule. Therefore, stage lines and "for hire" cars are permitted to be on an equality after the last scheduled trip of the stage lines for the day is made.[292]

[288] Re A. R. G. Bus Co. (Cal.) P.U.R.1919E, 232.
[289] Section 4, chap. 111, Laws of 1921, of Washington.
[290] Re Cebu Transp. Co. v. Sanchez (P. I.) P.U.R.1917F, 145.
[291] Price v. Pickwick Stages (Cal.) P.U.R.1920E, 574.
[292] General Order No. 70–A (Ariz.) March 12, 1920.

X. Classification of cars and service.

a. In general.

In one case, the Arizona Commission divided cars into two classes for the purpose of fixing time and rate schedules, light cars and heavy cars. Cars weighing 2,000 pounds or less were declared to be light cars, and cars weighing in excess of 2,000 pounds to be heavy cars.[293] In its rules and regulations adopted in 1918, the Commission provided that motor vehicle passenger transportation should be divided into two classes, denominated schedule service, and rent service. Schedule service was defined as that performed at regular and stated periods, not less than once each day, Sundays excepted, between points or stations situated in a determinate line or route; and rent service as consisting of any service not included in the definition of scheduled service.[294]

By a general order adopted in 1920, the Commission provided that "all motor vehicles engaged in the transportation of passengers, not between fixed termini or over a regular route, shall, for the purpose of regulation, be known as service cars. All motor vehicles engaged in the transportation of property, not operating between fixed termini or over a regular route, shall, for the purpose of regulation, be known as transfer trucks."[295]

b. Taxicab or "for rent" service.

The distinction between taxicab or "for rent" service and other automobile transportation for hire has already been alluded to,[296] and its bearing on the question of the right to impose regulation on one class of transportation and not the other. The distinction may also be important in determining whether a state Commission has jurisdiction over a certain kind of transportation. Legitimate taxicab service is a matter not under the regulation of the California Railroad Commission by the authority conferred by the legislature under the provisions of chapter 123, Laws of 1917; but it is essential that such taxicab

[293] Re Automobile Traffic (Ariz.) P.U.R.1915C, 945.

[294] Section V. Rules and Regulations Arizona Corporation Commission, Re Motor Vehicles, P.U.R.1919A, 52.

[295] General Order 72-A, June 2, 1920.

[296] *Supra*, II.

service be conducted upon a proper basis. In the opinion of the Commission, a legitimate taxicab or "for rent" service contemplates the renting of the entire car on either an hourly trip, or mileage basis, and the rental should cover the entire car irrespective of the number of persons comprising the "for rent" load; that the solicitation of individual fares does not constitute legitimate taxicab service.[297]

It has been held that one who operates an automobile, hack, or taxicab business upon the request of those who may desire to be carried in a special conveyance which is under their direction and control for the time, and at a price agreed upon for the service, does not operate on or over an established route, within the provisions of the Utah statutes, in violation of the rights of one who has obtained a certificate of convenience and necessity from the Commission entitling him to operate over a designated route, although the passengers in the taxicab may in fact be transported over the route designated in the certificate.[298]

The Illinois Public Utility Statute gives the Commission jurisdiction over common carriers. Taxicabs would be common carriers under the common law, but the Illinois act contemplates that a public utility in the nature of a common carrier of passengers for hire must operate upon a schedule, not only of rates or charges for the services, but also between fixed and definite points. Taxicabs are, therefore, held not to be common carriers within the meaning of this statute, and, therefore, not within the jurisdiction of the Commission.[299]

In Arizona, "rent service" is within the jurisdiction of the Commission. Every public carrier of passengers performing a rent service is required to file with the Commission and post in a conspicuous place in his home office or principal place of business where it will at all times be readily accessible for public inspection, a typewritten or printed schedule or statement describing in a general way the territory to be served and the rates or fares per mile or per hour, to be charged for the service, pro-

[297] Re Halstead (Cal.) P.U.R.1919A, 676.

[298] Public Utilities Commission v. Garviloch, 54 Utah 406, P.U.R.1919E, 182, 181 Pac. 272.

[299] Newcomb v. Yellow Cab Co. (Ill.) P.U.R.1916B, 983; Hughes v. Atlas Co. (Ill.) P.U.R.1916D, 4.

vided that the rate or fare for rent service, when performed between points from and to which a scheduled service is in effect, shall not be less than 140 per cent of the rate or fare prescribed for such scheduled service. It is also provided that if there are points in such territory to or from which it is more convenient or desirable to state the rates or fares in definite integral amounts per passenger, the schedule or statement may so provide. The rates of fare named in such schedules or statements apply to service performed under usual, ordinary, or normal circumstances or conditions; but if such carrier desires to assess a greater charge for service performed under unusual, extraordinary, or abnormal circumstances or conditions, the schedule or statement may provide that the rate of fare in such cases will be a definite and fixed percentage of the rate or fare prescribed for service performed under usual, ordinary, or normal circumstances and conditions.[300]

In the District of Columbia, a taxicab company is a common carrier within the meaning of the act of March 4, 1913 (37 St. at L. 938, chap. 150), § 8, and hence subject to the jurisdiction of the Public Utilities Commission of the District as a "public utility" in respect to the exercise of an exclusive right under a lease to solicit livery and taxicab business from persons passing to or from trains, at a railroad station, and as to its exclusive right under contracts with hotels to solicit taxicab business from guests; but it has been held that that part of its business which consists in furnishing automobiles from its central garage on individual orders, generally by telephone, cannot be regarded as a public utility business. The rates charged for such service were, therefore, held not open to inquiry by the Commission.[301]

Under the rules of the Maryland Commission, any motor vehicle used in the public transportation of passengers for hire, or in the public transportation of merchandise or freight for hire otherwise than on fixed schedules, over regular or established routes, is deemed to be a "hiring car." No "hiring car" is allowed to be operated along or over any route established by the Commission as a regular route by the issuance of a per-

[300] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52.

[301] Terminal Taxicab Co. v. Kutz, 241 U. S. 252, P.U.R.1916D, 972, 60 L. ed. 984, 36 Sup. Ct. Rep. 583.

mit to any person or persons, association or corporation, or over any substantial part thereof, except as it may be necessary to traverse the same as an incident to its ordinary hiring business, and no operator or person in charge of a hiring car is permitted to solicit patrons or business at either of the termini of any such established route, or at any point along the same, with the intent of carrying patrons or property over any established route or substantially similar route.[302]

The question of whether a railroad has the right to grant exclusive station privileges to a taxicab company will not be discussed here, because it is outside of the scope of this inquiry.[303]

c. Motor bus operation by railroads.

The operation of motor busses by street railway companies to supplement their existing service, is a probable development of automobile transportation service. It is the practice of one Commission, at least, that of the state of Washington, whenever a street car or interurban railway company desires to operate a feeder bus line, to require it to apply for a certificate of convenience and necessity, and also to put up a bond and to do everything that would be required of an independent auto stage company. In the state of Maryland, it is the policy of the Commission to have a railway operate feeder automobile lines when possible.[304]

But in West Virginia, a street railway company was refused permission to substitute motor driven bus service for street car service on certain roads, it appearing that the pavement was only macadamized about half the distance and that to reach the present end of the line about 3400 feet would have to be paved or macadamized and that during certain seasons of the year part of this drive which was not macadamized was impassible for automobiles or other motor driven vehicles. It also appeared

[302] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 9.

[303] Upon this point see Peters v. Ahnapee & W. R. Co. (Wis.) P.U.R. 1921E, 151.

[304] Round table discussion on Automobile Transportation at 33rd Annual Convention of Railway and Utilities Commissioners, at Atlanta, Georgia, 1921.

that the grade was very steep with sharp curves. The case arose upon a petition of a railway company for permission to discontinue service from a city to a country club and to substitute therefor automobile service.[305]

XI. Ownership of cars.

The practice of leasing cars on a percentage basis is held not desirable by the California Commission from the standpoint of the public interest on the ground that it does not result in the automobile transportation business being conducted on a stable basis, under the so-called lease, where the entire upkeep of the car, its maintenance and operation, falls on the lessor who hires himself and car to a line, claiming the right to operate by reason of having been engaged in this class of business prior to the enactment of the law governing jitneys; and where the operator is burdened with all the expense of licenses, indemnity bonds, and other costs, the lessee taking practically no risk nor responsibility. The Commission is of the opinion that under such circumstances the public does not receive the character of service to which it is rightfully entitled, and that the car owner does not receive the just return for the service, which he is performing. The Commission ordered that all transportation companies should be required to own their equipment or to lease such equipment for a specified amount on a trip or term basis, and that the leasing of equipment should not include the services of a driver or operator. The Commission stated that the employment of drivers or operators of leased cars should be made on the basis of a contract by which the driver or operator should bear the relation of an employee to the transportation company by whom such driver or operator should be engaged.[306] It has been held that this rule is not complied with where equipment is leased or operators employed on a basis of compensation dependent on the gross receipts per trip or for any period of time.[307]

XII. Operation of cars.

a. In general.

Statutes often provide that certain of the requirements pre-

[305] Re Charleston Interurban R. Co. (W. Va.) P.U.R.1916F, 338.
[306] Re Transportation Co. (Cal.) P.U.R.1918E, 782.
[307] Re Plaza Stages (Cal.) P.U.R.1919E, 243.

requisite to operation do not apply to operators of vehicles who operated prior to the date of the enactment of the law conferring jurisdiction on the Commission to regulate motor transportation.

A company rendering automobile stage service carried on by a taxicab company under contract, was held to be an auto transportation company operating in good faith within the meaning of § 4, chapter 111, of the Washington Session Laws of 1921, and entitled to a certificate to operate by virtue of said laws. But a taxicab company, operating an auto stage line as the agent of another company, was held not to be an auto transportation company operating in good faith, and not entitled to a certificate of convenience and necessity under such laws.[308] It was held that a certificate of convenience should not be denied to a transportation corporation on the ground that five-sixths of the incorporators have not been operating in good faith within the meaning of § 4, chapter 111, of the Washington Session Laws of 1921, because they have failed to file a bond in compliance with chapter 57 of the Laws of 1915, especially when considerable uncertainty exists in the minds of attorneys as to the application of such law to stage companies which merely enter cities of the first class for the purpose of discharging and receiving passengers.[309] And a bus company which applied to a city for a license and paid the license fee, and was told by the proper authority that it could operate, and which began operation April 26, 1917, was held, under the terms of chapter 213 of the California Statutes of 1917, to be operating in good faith prior to May 1, 1917, even though the license was not actually issued until after that date.[310]

Having once begun operation no motor vehicle operator in Illinois is allowed to discontinue without first securing permission from the Commission.[311] Operators of motor vehicles under jurisdiction of the Maryland Commission are not permitted to withdraw from public service permanently without having first given the Commission at least ten days' notice in writing of

[308] Re Rainier National Park Co. (Wash.) P.U.R.1921F, 828.

[309] Re Barker Motor Bus Co. (Wash.) P.U.R.1921E, 836.

[310] White Bus Line v. A. R. G. Bus Co. (Cal.) P.U.R.1919C, 922.

[311] Re Rules and Regulations Governing Corporations Operating Motor Vehicles (Ill.) General Order No. 68, July 28, 1921.

their intention to do so.[312] In Washington, no auto transportation company is allowed to discontinue the service called for under its certificate and time schedule without first giving to the Department of Public Works and to the public at least ten days' notice in writing of the intention to discontinue such service, and having secured from the Department permission so to do.[313]

b. Duty to operate or serve.

Automobile carriers, subject to Commission supervision, are under the same duty to serve all comers who tender the regular fare as are other carriers. It has been provided by the rules of the California Commission that no driver or operator of any motor vehicle for passenger transportation shall refuse to carry any person offering himself at any regular stopping place for carriage, and who tenders the regular fare to any regular stopping place on the route, unless at the time of such offer the seats of the motor vehicle are fully occupied. The operator may, however, refuse transportation to a person in an intoxicated condition or to one conducting himself in a boisterous or disorderly manner.[314] The Oregon Commission has made practically the same provision.[315] In Washington, operators of motor vehicles used in the transportation of passengers are required to carry all persons seeking passage unless the seats of such motor vehicle are fully occupied, or unless the person is intoxicated or conducting himself in a boisterous and disorderly manner, or is using profane language.[316]

An ordinance requiring a licensed auto bus to maintain a regular schedule from 6 A. M. to 12 midnight for at least six days a week has been held to be a valid exercise of the police power to regulate the use of streets.[317] It has also been held that an ordinance is not unreasonable in requiring the operation of a jitney for not less than twelve consecutive hours out of twenty-

[312] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 19.

[313] Section 6, Rule 43, Rules and Regulations of the Department of Public Works of Washington.

[314] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

[315] Rule 12, Order No. 798, issued January 13, 1922.

[316] Section 9, Rule 64, Rules and Regulations of the Department of Public Works of the state of Washington.

[317] Ex parte Lee, 28 Cal. App. 719, P.U.R.1916D, 8, 153 Pac. 992.

four, where it is customary for jitneys to operate on an average of fifteen hours a day, and the ordinance excepts Sundays, a reasonable time for meals, and time in case of accidents, breakdowns, or other casualties.[318]

If interruptions to the regular service of motor vehicles have continued or are likely to continue for more than twenty-four hours, written notice must be given the Maryland Commission of the character, cause, and probable duration of the same, and of the arrangements made or in progress for making available a substitute car.[319] In Utah notice of interruptions of service likely to continue for more than twenty-four hours, must be given promptly to the Commission and to the public along the route, with full statement of the cause and its probable duration; discontinuance of service for a period of five consecutive days with or without notice is deemed a forfeiture of all rights to operate, provided, however, that the Commission may permit resumption of operation if it deems such action proper; no operator is allowed to discontinue operation without ten days' notice to the Commission.[320]

In Pennsylvania, the holders of certificates of public convenience are required to give to the business conducted thereunder whatever personal attention and supervision may be required to insure that all rules and regulations of the Commission pertaining thereto, are complied with. They are also required to file as soon as received, the numbers of the licenses issued by the state highway department for the cars covered by the certificates.[321]

c. Safety of operation.

1. In general.

There is a general prohibition in the Maryland Commission's rules against reckless and unsafe operation. The rule reads as follows:

[318] Ex parte Sullivan, 77 Tex. Crim. Rep. 72, P.U.R.1915E, 441, 178 S. W. 537.

[319] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 18.

[320] Rules and Regulations Governing Automobile Stage Lines (Utah) XII.

[321] Rules 9, and 8, Order No. 18. Governing Automobile Transportation. Adopted October 21, 1919.

"No operator of any motor vehicle to which these rules are applicable shall operate the same recklessly, in an unsafe manner, or in disregard of the public general laws governing the operation of motor vehicles in this state. A persistent or flagrant violation of this rule or of duly prescribed street traffic regulations shall be sufficient ground for revocation or suspension of permit." [322]

Although there are usually statutes fixing the speed of automobiles, the matter of speed of automobiles engaged in carriage of freight or passengers for hire may be subject to regulation by Commissions. It has been held in Arizona that automobiles operated for transportation of passengers and property over highways having heavy grades and sharp curves should be operated at a speed not to exceed twenty-five miles per hour on straight roads and twelve miles per hour around curves and at points where the view is obstructed.[323] In an earlier proceeding, twenty miles an hour in valleys and from ten to fifteen miles in mountainous regions was considered a safe maximum speed.[324] In Oregon, vehicles must not be driven in a reckless or careless manner or at a rate of speed exceeding that prescribed by the laws of the state.[325] The ordinance in the Fort Worth case fixed the speed of operation at twelve miles per hour in the business section of the city, and eighteen miles per hour in the residence section.[326] This ordinance also prohibited racing with any other motor bus or driving rapidly to pass one in order to be first to any prospective passenger or to anyone waiting for another motor bus or other conveyance. In Utah, no automobile corporation is to announce or maintain a time schedule that shall require unsafe, unreasonable, or excessive speed in operation; no person driving or operating a motor vehicle should drive recklessly; and upon approaching any bridge, sharp curve, or other dangerous place, or in traversing such bridge, curve or dangerous place, or on passing or meet-

[322] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 22.
[323] Re Bohn (Ariz.) P.U.R.1918B, 288.
[324] Re Automobile Traffic (Ariz.) P.U.R.1915C, 945.
[325] Rule 19, Order No. 798, issued January 13, 1922.
[326] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

ing other vehicles, the operator of a motor vehicle is required to slow down and have the vehicle under immediate control.[327]

Automobiles should be kept under control, especially at crossings. An ordinance requiring jitneys to be brought to a full stop before crossing any street or any interurban or street railway has been held to be a valid regulation in the interest of the public safety.[328] It has been provided by the Arizona Commission that all cars must approach sharp turns and obscured portions of the road under full control and at a speed that will permit stopping cars within their length. Horns must be sounded or other suitable warning given in approaching obscured turns.[329] In one case, all stage line cars were ordered to approach electric and steam railway crossings under full control and at a speed not to exceed four miles per hour.[330] In California, all transportation companies are required to stop each and every stage in the transportation of passengers before crossing the tracks of any steam or electric interurban railroads, such stop to be made not less than fifty feet nor more than seventy-five feet from the nearest rail of the railroad over which the highway crosses. After making the stop, the driver or operator of the stage is required carefully to look in each direction for approaching cars or trains, and not to start his stage until it has been ascertained that there are no cars or trains approaching the crossing in either direction. This rule does not apply to the operation of passenger stages within municipalities over the tracks of electric or other street railroads.[331] In Illinois, operators of motor vehicles are prohibited from crossing a railroad at grade without first having come to a full stop at a point where the driver thereof shall have a clear view of the railroad track in either direction for a distance of five hundred feet.[332] The rule in Maine is that the operator of a motor bus while carrying passengers shall cause the vehicle to come to a full stop before crossing the tracks of any steam or

[327] Rules and Regulations Governing Automobile Stage Lines (Utah) X.
[328] Huston v. Des Moines, 176 Iowa 455, P.U.R.1916D, 7, 156 N. W. 883.
[329] Re Automobile Traffic (Ariz.) P.U.R.1915C, 945.
[330] Re Van Buren Street (Ariz.) P.U.R.1916D, 6.
[331] General Order No. 63 (Cal.) effective Dec. 15, 1921.
[332] Re Rules and Regulations Governing Corporations Operating Motor Vehicles (Ill.) General Order No. 68, July 28, 1921.

electric railroad.[333] In Nevada, all transportation companies, are required to stop auto stages and trucks engaged in the transportation of passengers, explosives, inflammable liquids, etc., before crossing the tracks of any steam or electric interurban railroad, such stop to be made not less than twenty feet nor more than fifty feet from the nearest rail of the railroad over which the highway crosses. After making the stop the driver or operator must carefully look in each direction for approaching cars or trains and must not start his stage or truck until it has been ascertained that there are no cars or trains approaching the crossing from either direction. This rule does not apply in connection with the operation of passenger stages or freight trucks carrying inflammable liquids and explosives within municipalities as regards operation over the tracks of electric or other street railroads.[334] In Oregon, motor vehicles engaged in the transportation of persons must, before passing any railroad track at grade, be brought to a complete stop within a distance of not less than fifty feet and not greater than one hundred feet from the nearest rail thereof, and must not proceed thereover until it is observed that it is safe to do so.[335] Drivers of motor vehicles carrying passengers for hire, in Utah, are required to bring such vehicles to a full stop within fifty feet of any unguarded grade crossing of any railroad or interurban track before crossing.[336]

Smoking or the carrying of smoldering or lighted pipes, cigars, or cigarettes, is not permitted in any closed motor bus, in the District of Columbia, except in such seats and in such compartments as the company may specially designate for smoking purposes.[337]

The number of hours a day a driver may be permitted to operate may be fixed and limited, in the interest of safety. The

[333] Rule 13, Rules and Regulations of the Maine Public Utilities Commission Governing Motor Vehicles, effective July 9, 1921.

[334] Re Automobiles at Crossings (Nev.) General Order No. 5, Jan. 15, 1922.

[335] Rule 17, Order No. 798, issued January 13, 1922.

[336] Re Rules and Regulations Governing Automobile Stage Lines, XIII. (Utah).

[337] Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, September 1, 1921, § 10.

rules of the California Commission provide that no transportation company shall cause or allow any driver or operator of its motor vehicle to work as driver or operator for more than a maximum of ten hours in any twenty-four hour period.[338] A similar provision has been made by the Oregon Commission.[339] The ordinance in the Forth Worth case limited and fixed the number of hours each day in which a motor bus must be operated.[340] In Washington, it is provided that: "No auto transportation company owning, controlling, operating or managing any motor vehicle used in the transportation of persons or property, shall cause or allow any driver or operator of such motor vehicle to work as a driver or operator for more than a maximum of ten driving hours in any twenty-four hour period and such driver or operator shall have at least eight consecutive hours rest in each twenty-four hour period."[341]

In the District of Columbia, all motor busses are required to stop to take on or let off passengers at such regular stopping places as may be approved from time to time by the Commission, provided that at special points where an inspector or other proper official is stationed to assist in the movement of busses, busses may be dispatched without stopping, upon authority from such official, and providing further than disabled and special busses, and busses filled to capacity and displaying a "bus full" sign need not stop for passengers.[342] It is provided in the rules of the Maine Commission that no motor bus shall stop for the purpose of taking on or discharging passengers at a point within fifty feet of a designated stopping place or waiting room of any electric railroad.[343] The ordinance in the Fort Worth case prohibited motor busses from remaining standing upon any street for the purpose of loading or unloading passengers, except they be

[338] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

[339] Rule 11, Order No. 798, issued January 13, 1922.

[340] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[341] Section 9, Rule 63, Rules and Regulations of the Department of Public Works of the state of Washington.

[342] Section 3, in Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, Sept. 1, 1921.

[343] Rule 12, Rules and Regulations of the Maine Public Utilities Commission Governing Motor Vehicles, effective July 9, 1921.

brought as near as possible to the righthand curb.[344] In Oregon, passengers must not be permitted to board or alight from vehicles except on the right hand side thereof.[345]

2. Use of trailers.

The use of trailers by passenger cars was prohibited in 1919 by the Arizona Commission.[346] And it has been provided by the California Commission that except when specially authorized by the Commission, no motor vehicle used in the transportation of passengers shall be operated or driven with any trailer or other vehicle attached thereto, unless a vehicle should become disabled while on a trip and be unable to run from its own power. In such event the disabled car may be towed to the nearest point where repair facilities are available.[347] A similar rule has been adopted by the Oregon Commission.[348]

The power of a municipality authorized to regulate the operation of jitneys, to prohibit the drawing of trailers has been questioned, but upheld.[349]

3. Carriage of dangerous substances.

Inflammable and explosive articles, such as liquid nitrogen, dynamite, fireworks, oil, gas, and petroleum are not to be transported by auto stages carrying passengers in the state of Utah.[350] Auto transportation companies in the state of Washington are not allowed to carry liquid nitrogen, dynamite, and other explosives, petroleum oil in packages, phosphorus, and other combustible and dangerous articles.[351]

[344] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[345] Rule 18, Order No. 798, issued January 13, 1922.

[346] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52, 60.

[347] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

[348] Rule 14, Order No. 798, issued January 13, 1922.

[349] Huston v. Des Moines, 176 Iowa 455, P.U.R.1916D, 7, 156 N. W. 883.

[350] Rules and Regulations Governing Automobile Stage Lines (Utah) VIII., § (b).

[351] Section 9, Rule 73, Rules and Regulations of the Department of Public Works of Washington.

4. Qualification of chauffeurs.

Commissions or municipalities with power to regulate automobile transportation, have the unquestioned right to prescribe rules governing the qualifications or conduct of chauffeurs and drivers. It has been held that a municipal ordinance requiring one to have thirty days' experience in the operation of an automobile in the city before being permitted to operate a jitney bus, is not invalid as interfering with a right of a person to pursue a lawful calling, but is a reasonable exercise of the police power.[352]

The question as to the qualification of chauffeurs or drivers of automobiles has several times been up for consideration by the Arizona Commission. In an early case it was held that all chauffeurs or drivers operating or driving cars in automobile transportation service should be at least twenty-one years of age, have had at least one year's experience in driving and operating automobiles, and be sufficiently acquainted with the road and route safely to operate a car thereon.[353] In another case, it was held that automobiles operated for transportation of passengers and property over highways having heavy grades and sharp curves should be in charge of experienced chauffeurs who have attained the age of twenty-one years.[354] But by § XVIII. of the Commission's General Order of May 8, 1918, it was provided that no person should be permitted to manage or drive any motor vehicle employed in the transportation of passengers unless over the age of eighteen, and a licensed or registered chauffeur who has complied with the statutes of the state.[355]

It has been provided by the California Commission that drivers of vehicles shall be at least twenty-one years of age, of good moral character, and fully competent to operate the vehicles under their charge, and should hold licenses from the State Motor Vehicle Department as required by § 24, Par. (a) of the Motor Vehicle Act; that no operator of a motor vehicle carrying passengers shall drink any intoxicating liquor during the time he is on duty or at any time use intoxicating liquor to excess; or

[352] Ex parte Cardinal, 170 Cal. 519, P.U.R.1915E, 282, 150 Pac. 348.
[353] Re Automobile Traffic (Ariz.) P.U.R.1915C, 945.
[354] Re Bohn (Ariz.) P.U.R.1918B, 288.
[355] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52.

shall smoke any cigar, cigarette, tobacco, or other substance in such vehicle during the time he is driving the vehicle.[356]

The operators of motor vehicles, under the provisions of the Illinois jitney rules, are required to be duly licensed chauffeurs at least twenty-one years of age, and having at least two years' experience in motor bus operation.[357]

In Maine and New Hampshire, it has been provided that no operator of a motor bus shall create any disturbance or unnecessary noise to attract persons to the vehicles as passengers.[358]

Under the rules of the Oregon Commission, drivers must be at least twenty-one years of age, of good moral character and fully competent to operate vehicles under their charge. They are required to hold a state chauffeur's license. Drivers of passenger cars are forbidden to drink intoxicating liquors or to smoke while driving.[359]

In Pennsylvania, the employment or retention of incompetent or unfit persons to operate cars, is sufficient ground for the revocation of certificates or for refusal to grant renewals.[360]

Drivers of motor vehicles in Utah are required to have three years' experience, unless it shall appear to the Commission that they are safe and prudent drivers. Drivers are expected to be civil, polite, and of good character and reputation, and no person is allowed to operate a motor vehicle while under the influence of liquor. Every chauffeur is required to wear, while on duty, a badge or some insignia which shall be an evidence of his right and license to act as chauffeur or operator under the rules of the Commission.[361]

In Washington, drivers of motor vehicles are required to be of good moral character, and fully competent to operate the vehicles under their charge. They must hold an operator's license

[356] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

[357] Re Rules and Regulations Governing Corporations Operating Motor Vehicles (Ill.) General Order No. 68, July 28, 1921.

[358] Rule 5, Rules and Regulations of New Hampshire Public Service Commission Governing operation of Motor Vehicles, adopted May 28, 1919; Rules and Regulations of Maine Public Utilities Commission Governing use of motor vehicles, effective July 9, 1921.

[359] Rules 8–10, Order No. 798, issued January 13, 1922.

[360] Rule 9, Order No. 18, Governing Automobile Transportation, Adopted October 21, 1919.

[361] Rules and Regulations Governing Automobile Stage Lines (Utah) IX.

as provided in chapter 108, Session Laws of 1921. Drivers or operators of motor vehicles are forbidden to drink any intoxicating liquor while on duty or at any time to use intoxicating liquor to excess. Smoking while driving passenger vehicles is also prohibited. Drivers must not create any disturbance or make any unnecessary noise to attract persons to the vehicle.[362]

5. Capacity and loading.

In Arizona, cars must not be loaded in excess of their seating capacity as declared or rated by the manufacturers. In addition to the number of persons carried, as provided, light cars may carry not to exceed one hundred fifty pounds of property, and heavy cars may carry not in excess of three hundred fifty pounds of property. Not to exceed one hundred fifty pounds additional of property may be carried in lieu of persons in event seats are not occupied. The practice of carrying trunks or other baggage on the footboard of automobiles transporting passengers, was condemned as being dangerous and the Commission required its abatement.[363] In a later order it was provided that no public carriers of passengers subject to the order, its agents, officers, or employees, "shall permit any article or package, or any piece or parcel of baggage or luggage, loaded in or upon any motor vehicle then and there used or employed by it in the transportation of passengers, to extend more than 8 inches beyond the outer edge of the running board of such motor vehicle."[364] Section XX. of the Commission's rules and regulations governing the operation of automobiles prohibits the carrying of a greater number of passengers than the actual seating capacity thereof will permit.

The California Commission has provided that no motor vehicle shall be allowed to carry more passengers than the rated carrying capacity as filed with the Commission, that no passengers shall be allowed to ride on the running boards, fenders, or any

[362] Section 9, Rules and Regulations of the Department of Public Works of the state of Washington.

[363] Re Automobile Traffic (Ariz.) P.U.R.1915C, 945.

[364] Section XXII. of the Rules and Regulations Governing Automobiles; Re Motor Vehicles (Ariz.) P.U.R.1919A, 52.

[365] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52.

other part of the vehicle than on the seats thereof, that the operator shall not permit on the front seat of the motor vehicle more passengers than the seat was designed to carry, exclusive of the driver, or permit any passenger to occupy any other portion of the vehicle forward of the back of the driver's seat, and that no passenger shall be allowed to sit on the front seat to the left of the driver if a left-hand drive motor vehicle, or to the right of the driver if a right-hand drive motor vehicle, and that more than one passenger shall not be allowed to occupy the front seat of any motor vehicle with a touring-car body, operated by center control. The Commission also made a rule prohibiting motor vehicles used for the carriage of passengers from carrying luggage, baggage, packages, trunks, crates, or other loads which shall extend more than eight inches beyond the running board of the vehicle.[366] The same requirements have been established in Oregon.[367]

The maximum carrying capacity of every motor bus in operation in the District of Columbia must be fixed by the Commission, and the number of adult passengers admitted to any bus at any one time must not exceed the number so fixed; provided, that children under fourteen years of age may be accommodated in any such bus on a basis of two children to the space provided for one adult, on condition that the total number so accommodated must not exceed one and one-half times the maximum adult carrying capacity fixed by the Commission.[368] Passengers are not allowed to ride on the front or rear bumpers, running boards, fenders, or steps of any busses. The platforms and steps of busses must be kept clear to allow of the rapid and easy ingress and egress of passengers.[369]

Motor vehicle operators in Illinois are required to submit to the Commission the normal carrying capacity of each vehicle, according to construction and distribution of weight upon any two wheels through any one axle and operators are prohibited from loading in excess of such normal weight carrying capacity;

[366] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

[367] Rules 13, 15, Order No. 798, issued January 13, 1922.

[368] Section 5, Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, Sept. 1, 1921.

[369] Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, Sept. 1, 1921.

and it is further provided that passengers shall not be allowed to ride except in seats provided for their accommodation.[370]

In Maine, passengers must not be carried in excess of the seating capacity of the vehicle as stated in the application except that children under seven years of age are allowed to be carried on the laps of persons accompanying them. Persons are not permitted to stand on the step, running board, hood, or door of any motor bus, and no more than one passenger is permitted to occupy the seat with the driver.[371]

The Maryland Commission has adopted very comprehensive rules with reference to the carrying capacity of automobiles and their proper loading. These rules are as follows:

"The maximum permissible carrying capacity of motor vehicles engaged in the transportation of passengers for hire, to which these rules are applicable, shall be determined by dividing the total length of seats in inches by sixteen, this formula being based upon an allowance of sixteen inches per passenger, and the resulting figure not holding where the aggregate weight of such passengers on the basis aforesaid would exceed the carrying capacity of the chassis.

"The maximum permissible carrying capacity of such motor vehicle as determined by the Public Service Commission shall be designated on its permit issued as aforesaid.

ILLUSTRATION.

Total length seats	128	140	160	176	192	208	224	240
Pounds capacity	1120	1260	1400	1540	1680	1820	1960	2150
Number passengers	8	9	10	11	12	13	14	15

"No motor vehicle engaged in transporting passengers for hire, to which these rules are applicable, shall be permitted by its operator to carry a greater number of passengers under any circumstances than the number specified in the permit issued by the Public Service Commission for the operation thereof.

"Not more than one person in addition to the driver shall be permitted to occupy the front seat of any motor vehicle of the

[370] Re Rules and Regulations Governing Corporations Operating Motor Vehicles (Ill.) General Order No. 68, July 28, 1921.

[371] Rules 4, 5, and 7, of the Rules and Regulations of the Maine Public Utilities Commission Governing Motor Vehicles, effective July 9, 1921.

type known as the left hand drive engaged in the public transportation of passengers for hire, to which these rules are applicable, if the gear-shift is located on the right hand side of the driver; and not more than one person, in addition to the driver, for each sixteen inches of width of the front seat, allowing sixteen inches for the driver, if the gear-shift is located on the left hand side of the driver; nor shall more than one person in addition to the driver be permitted to occupy the front seat of any motor vehicle of the type known as right hand drive engaged in the public transportation of passengers for hire, to which these rules are applicable, where the gear-shift is located on the left hand side of the driver; and not more than one person in addition to the driver, for each sixteen inches of width of front seat, allowing sixteen inches for the driver where the gear-shift is located on the right hand side of the driver.

"No passenger shall be permitted to ride upon the steps or the running board of any motor vehicle engaged in the public transportation of passengers for hire, to which these rules are applicable.

"No person shall be permitted to ride upon the top of any motor vehicle engaged in the public transportation of passengers for hire, to which these rules are applicable, unless such top has been designed and constructed for such use, and is properly provided with seats and protecting railings." [372]

In New Hampshire, no more passengers can be taken than is warranted by the seating capacity of the vehicle, according to the manufacturer's rating, except that children under seven years of age can be carried in the arms or on the laps of parents or adult persons accompanying them, but no passenger with a child in arms or on his lap is permitted on the front seat beside the driver.[373] Persons are not permitted to stand upon the running boards or steps of motor vehicles or to sit upon the fenders, dash, or doors.[374]

[372] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rules 13, 14, 15.

[373] Rule 2, Rules and Regulations of New Hampshire Public Service Commission Governing the Operation of Motor Vehicles adopted May 28, 1919.

[374] Rule 3, Rules and Regulations of the New Hampshire Commission Governing jitneys, May 28, 1919.

The Pennsylvania rule is that persons holding such certificates shall not carry more passengers in any car than the number specified for said car in the certificates.[875]

Motor vehicle operators within the state of Utah are not allowed to carry passengers in excess of the rated seating capacity of the vehicle as defined by the manufacturer; and the quantity of freight, express, or baggage that may be carried with passengers shall not be greater than can be safely and conveniently carried without causing discomfort to the passengers. Not more than one person in addition to the driver of a motor vehicle is allowed to occupy the front seat unless the rated seating capacity provides for an additional number, and no passenger is permitted to ride upon the steps, hood, or running board.[876]

Auto transportation companies, in the state of Washington, are prohibited from carrying more passengers than rated carrying capacity as filed with the Department and operators are not to allow passengers to ride on the running boards, fenders, or any other part of the vehicle than the seats thereof, and no operator is to allow on the front seat of a motor vehicle more passengers than the seat is designed to carry, exclusive of the driver; or permit or allow any passenger to occupy any other portion of the vehicle forward of the back of the driver's seat. No passenger is permitted to sit on the front seat to the left of the driver if a left hand drive motor vehicle or to the right of the driver if a right hand drive motor vehicle and no more than one passenger shall occupy the front seat of any motor vehicle unless the seat is forty-eight inches or more in width. The transportation of baggage trucks, crates, or other loads extending beyond the running board on the left side is forbidden and trailers or other vehicles attached to a motor vehicle are not to be used without permission by the Department except in case of accident.[877]

d. Health and comfort of passengers.

In the District of Columbia all motor busses in service must

[875] Rule 5, Order No. 18, Governing Automobile Transportation, Adopted October 21, 1919.

[876] Rules and Regulations Governing Automobile Stage Lines (Utah) VIII.

[877] Rule 65 to 70, § 9, Rules and Regulations of the Department of Public Works of Washington.

be kept in a clean and sanitary condition. The busses must be thoroughly swept and dusted at least once each day. At least once every seven days the interior wood-work, glass, and floors are required to be thoroughly cleansed with an antiseptic solution subject to the approval of the Health Department of the District.[378] The Commission requires that all closed motor busses in service shall be kept well ventilated and shall have at all times at least two ventilators open, preferably one near the front end of the bus and the other at the rear end of the bus. This section does not apply to motor busses equipped with passenger bodies of the touring, sedan, or limousine type furnished as standard equipment by the manufacturers.[379]

In Oregon, every motor vehicle must be maintained in a safe and sanitary condition and must be at all times subject to the inspection of the Commission or its duly authorized representatives.[380]

In Washington, auto transportation companies transporting passengers must maintain such comfort stations and stops thereat, along its line or route as shall be necessary to properly care for the comfort of its patrons.[381]

XIII. Return.

The question of what the percentage of return for carriage by automobile should be, has not yet been settled. This kind of transportation is comparatively new. The capital required is not so much as that needed for steam or electric railways. The risk which must be taken into account, is perhaps greater. As yet, not enough is known about the business to state with any degree of assurance what the return ought to be. It is needless to state that it must be sufficient to attract capital, or capital will be invested in other lines of business.

The Pennsylvania Commission announced in one case that it will not regulate small auto bus lines under the same standards

[378] Section 7, in Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, September 1, 1921.

[379] Section 8, in Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, September 1, 1921.

[380] Rule I. Order No. 798, issued January 13, 1922.

[381] Section 9, Rule 75, Rules and Regulations of the Department of Public Works of Washington.

of valuation and return that apply to utilities in which capital in large amount has been invested by incorporated companies. The Commission states that elements such as the employment of individual time and talents in the development of such businesses, and which deserve reward entirely apart from any measure of fixed return upon the meager amounts of capital invested, must be considered if these small and worthy enterprises are to be encouraged in giving the best possible public service; that it must also be considered that such utilities are given free, excepting only a few inconsequential local assessments or taxes, exclusive rights of way over streets and highways maintained at public expense, and all the benefits of police and other protection which the state and the local communities furnish. It was held in this case that an increase in rates for a motor bus line will not be granted where the existing rates yield a return of 50 per cent on the capital actually invested, after setting aside 50 per cent for depreciation on the equipment and making very liberal allowances for general management.[382] And a return of 29.15 per cent on the investment in an automobile stage equipment has been held excessive.[383]

XIV. Routes.

The operation over an established route is important. It is provided by the Maryland Commission that no motor vehicle, for which a permit has been issued, shall be operated for hire over any route other than that prescribed therein, without the express consent of the Commission, unless it happen that such route be blocked, or otherwise rendered temporarily impassable. Operation over part only of the regular or established route is deemed to be operation over a route other than that authorized in the permit, within the meaning of this rule.[384]

The California Commission in one case refused to permit an auto truck company to include in its tariff a proviso to the effect that detours may be made in certain instances, especially where such detours were proposed to be made only at the discretion of the drivers, with no limit set as to their extent.[385]

[382] Barber v. Drew (Pa.) P.U.R.1920C, 194.
[383] Re Crown Stage Co. (Cal.) P.U.R.1921A, 747.
[384] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 6.
[385] Re Escondido Truck Line (Cal.) P.U.R.1918E, 793.

In Utah, every automobile corporation must file with the Commission, a schedule showing the number and make of the motor vehicle or vehicles, and the seating capacity thereof, that it is proposed to operate, for hire and compensation, over any particular route or routes, or between specified termini, and no such motor vehicle can be operated for hire or compensation, over any other route, or between other termini, so as to interfere with its operation over the regular route, without the express permission of the Commission, unless it happens that the established route of such motor vehicle is temporarily blocked or otherwise impassible.[386]

Municipalities, which have the power to regulate motor vehicle transportation, have the unquestioned right to limit such traffic to specified routes. Under a charter provision empowering a municipality to grant, refuse, or revoke licenses to owners of vehicles kept for hire therein, and to subject them to such regulation as the interest and convenience of the inhabitants thereof may require, the municipality has been held to have power to prescribe the routes of motor vehicles.[387] It has been held in Pennsylvania that a city may, by ordinance, establish routes for jitneys under legislative authority to regulate motor vehicles and under the police power, although jitneys are excluded from three-fourths of the streets; and that an ordinance requiring jitney operators to cover a minimum distance over an entire route is valid.[388] A jitney ordinance requiring operation over a fixed route has also been held to be valid in Texas.[389] And an ordinance providing that only jitneys which follow certain routes shall be permitted to go through certain streets has been declared not to be an unwarranted discrimination.[390] A municipal ordinance has also been held not unreasonable in prohibiting the operation of a jitney off of, or away from, a selected route and termini, where the operator makes the selection, and may apply to the city for a change in the route or termini at any

[386] Rules and Regulations Governing Automobile Stage Line (Utah) VII.

[387] Ex parte Dickey, 76 W. Va. 576, P.U.R.1915E, 93, 85 S. E. 781.

[388] Philadelphia Jitney Asso. v. Blankenburg (Pa.) P.U.R.1916D, 8.

[389] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[390] Peters v. San Antonio, — Tex. Civ. App. —, P.U.R. 1917F, 903, 195 S. W. 989.

time.[391] In the same case, it was held that an operator cannot attack the provisions of an ordinance providing that an application for a license to operate a jitney over a particular route may be granted as applied for, or in a modified form, or be refused under certain conditions, where he has made no application for such a license.

XV. Rates and schedules.

a. In general.

The jurisdiction of the Commission, over rates of carriers engaged in transportation by automobile, has already been discussed.[392] Municipalities, in the absence of legislation conferring jurisdiction on the state Commissions over the subject, probably have power to fix rates by ordinance or otherwise, provided such rates are reasonable and do not violate any constitutional prohibition.[393]

The power to establish reasonable passenger rates includes the power to fix reasonable rates for baggage. In an early proceeding, the Arizona Commission established rates for this kind of service.[394] Increases in rates or fares or alterations in rules, regulations, or tariff provisions so as to effect an increase in rates or fares are prohibited except on a showing before the Commission and a finding by the Commission that such increase is justified.[395]

The Commission of the District of Columbia provided in one case that motor vehicles carrying passengers for hire over defined routes should not charge more than 10 cents for a continuous trip one way between the city terminal of any route and any other point within a certain central area, and that an additional fare not to exceed 5 cents might be charged between points outside of said area and the city terminal within said area. It was further provided that the rate of fare to each

[391] Ex parte Sullivan, 77 Tex. Crim. Rep. 72, P.U.R.1915E, 441, 178 S. W. 537.

[392] See *supra*, V.

[393] Philadelphia Jitney Asso. v. Blankenburg (Pa.) P.U.R.1916D, 8.

[394] Re Automobile Traffic (Ariz.) P.U.R.1915C, 945.

[395] Section XIV. Docket No. 460, Re Motor Vehicles (Ariz.) P.U.R. 1919A, 52.

should be plainly and conspicuously displayed on each vehicle so as to be easily read by prospective passengers.[396]

There is a provision in the Maine rules that the fare between any two points shall not be less than the fare charged between the same points by any electric or steam railroad or other common carrier.[397]

In Maryland, any person boarding a motor vehicle to which the rules of the Commission are applicable, engaged in the public transportation of passengers for hire, when such vehicle is bound in the direction opposite from his destination, must be charged the regular and fixed fare for carriage to the terminus or other point where such vehicle begins its trip in the direction of such destination.[398]

A Commission may, as a condition of granting a certificate, prohibit the charging of rates below a specified amount.

The New York Commission, Second District, in one case, granted a certificate of public convenience and necessity for the operation of a bus line over a specified route in a city for transporting passengers and baggage between specified hotels and railroads upon condition that the fares should be not less than 10 cents for each passenger carried over the whole or any part of the route.[399]

In Arizona, tariffs are required to be filed with the Commission and posted at the stations or stopping places on the line or route of any public carrier of passengers performing a scheduled service. They must be typewritten or printed in type not less than six point, full-face, upon hard calendered paper of good and durable quality, and set forth in clear and explicit terms, and in the order named:

"(1) The rules and regulations, if any, governing the tariff; (2) a statement of the circumstances or conditions, if any, which in any manner increase or diminish any rate or fare named in such tariff; (3) stop-over privileges and extensions of time limits; (4) baggage rules and allowances and excess bag-

[396] In Re Rates of Fare on Motor Vehicle Lines (D. C.) Order No. 238, P. U. C. No. 20972, January 2, 1918.

[397] Rule 8, Rules and Regulations, Maine Public Utilities Commission Governing Motor Vehicles, effective July 9, 1921.

[398] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 11.

[399] Re Butts (N. Y.) P.U.R.1916D, 4.

gage rates; (5) children's fares; (6) adult fares, definitely and specifically stated, in cents or in dollars and cents per passenger, together with the names of the stations or stopping places from and to which they apply, arranged in a simple and systematic manner." [400]

In California, each transportation company must file with the Railroad Commission, schedules of its rates and must not charge or receive a greater or less or different compensation.[401] The Illinois Commission requires motor vehicle operators to file their rate schedules.[402]

The rule of the Maryland Commission, in respect to this, is as follows:

"The owner or person or persons, association, or corporation lawfully in possession of a motor vehicle to which these rules are applicable, shall file with the Commission, and shall print and keep open to public inspection, schedules showing the rates, fares and charges exacted for transportation of persons and property within the state for the purposes, in the manner, and over the roads and streets described in Rule 1 hereof, which for the purposes of these rules shall be designated tariff schedules. No operator of any such motor vehicle shall make any charge other than or different from those filed as above provided. The person or persons, association or corporation to whom or to which a permit is issued for the public transportation of passengers for hire shall cause to be posted conspicuously in the motor vehicle, the operation of which is thereby authorized, a copy of such tariff schedule or tariff schedules." [403]

All companies or persons, operating automobiles as common carriers in the state of Nevada, are required to file passenger and freight schedules and any other schedules covering the transportation of persons or property which may be required by the Commission together with such reports as the Commission may demand from time to time.[404] The New Hampshire Commission requires the filing with the Commission of a schedule of

[400] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52, 57.

[401] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

[402] Re Rules and Regulations Governing Corporations Operating Motor Vehicles (Ill.) General Order No. 68, July 28, 1921.

[403] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 10.

[404] General Ruling No. 3 (Nev.) P.U.R.1919C, 922.

rates and the posting of a like schedule in some conspicuous place on the car operated.[405] In Pennsylvania, all holders of certificates for automobile operation must file with the Commission their schedules of rates and charges in the form and manner prescribed by the Commission.[406] And all holders of certificates operating jitneys, auto busses, or automobiles in call service, must post rates of service conspicuously inside the bodies of such vehicles.[407] Operators of motor vehicles within the state of Utah are required to file with the Commission schedules of fares and rates.[408] Auto transportation companies, operating in the state of Washington, must file tariffs naming rates of fare to be charged in the transportation of persons and property between points on the proposed route, copies of which tariffs are to be kept open for public inspection at the company's principal office and at the terminus of each route or routes and at the principal stations thereon and said copy must be posted in a conspicuous place in each motor vehicle, and in places regularly used for loading and unloading passengers along the line or route. Tariffs cannot be varied or changed without permission from the Department of Public Works and the payment of commissions for the sale of tickets or fares is prohibited.[409]

b. Tickets.

In an early proceeding, the Arizona Commission provided that each passenger should be supplied with a ticket, which should contain and show:

(a) A serial number.

(b) Date of sale and date of expiration.

(c) The rate or price paid for same.

(d) Amount of liability of carrier to passenger, and liability for baggage if limited.[410]

[405] Rule 7, Rules and Regulations of New Hampshire Public Service Commission Governing Motor Vehicles, May 28, 1919.

[406] Rule 14, Order No. 18, Governing Automobile Transportation, Adopted October 21, 1919.

[407] Rule 13, Order No. 18, Governing Automobile Transportation, Adopted October 21, 1919.

[408] Rules and Regulations Governing Automobile Stage Lines (Utah) V.

[409] Section 5, Rules and Regulations of the Department of Public Works of Washington.

[410] Re Automobile Traffic (Ariz.) P.U.R.1915C, 945.

The California Commission has ruled that no transportation company should accept for passage over its line any ticket other than its own issue, except it be a coupon of a through joint ticket reading via its line issued by a connecting carrier, or in cases where optional route arrangements are provided for under the terms of joint tariffs on file with the Commission. It further provided that no transportation company should pay a commission to any party or person, ticket agent or ticket agency, for the sale of tickets, unless a *bon fide* contract or agreement had been executed between such party and the agent of the transportation company.[411]

c. Time schedules.

In states in which some attention is given to the regulation of motor vehicles operated as common carriers, time schedules are generally required to be established and maintained.

In Arizona, every public carrier of passengers by motor vehicles performing a scheduled service must file with the Commission and post in a conspicuous place, easily accessible for public inspection, at each station or stopping place on its line or route: (a) a time-table or schedule setting forth, by day and hour, the times at which the vehicles used, operated, or employed in such service arrive at and depart from such stations or stopping places; (b) a table showing the distances between such stations or stopping places.[412]

The California Commission has required that all transportation companies file with the Commission two copies of a working time schedule, showing the time of arrival and departure from and at all termini, and time of departure from all intermediate points, also distance between all stops scheduled to be made either regularly or on application by intending passengers. It has further provided that a copy of time schedules shall be posted at each terminus and at all intermediate stations where tickets were sold, and that a copy of such schedule be in possession of each operator or driver of any vehicle.[413]

[411] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

[412] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52, 55. For an earlier order, see Re Automobile Traffic (Ariz.) P.U.R.1915C, 945.

[413] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

Public utilities operating motor vehicles in Illinois, are required to file a time table showing the time of departure and arrival at each point, and if any changes are proposed to be made therein, a new time table is required to be filed with the Commission at least five days before the effective date of such time. Any discontinuance of service for a period of ten consecutive days, with or without notice to the Commission, unless the Commission otherwise orders, is deemed to be a forfeiture of all rights obtained by virtue of the certificate of convenience and necessity and such certificate is thereby canceled, annulled, and set aside.[414]

In Maine, the time for departure from designated points must be displayed in a conspicuous place within the motor bus.[415]

In Maryland, no motor vehicle, to which the rules of the Commission are applicable, can be operated on any schedule other than that authorized in its permit, nor can the time of leaving any of the principal points on its route be varied, except in emergency cases, without the express consent of the Commission.[416]

The requirement in New Hampshire is that each jitney operator must file with the Commission a schedule stating at what times he will run over his route. He must post a copy of the schedule in a conspicuous place on the car operated. Unless prevented by some unavoidable cause the trip schedule must be maintained, and suspension of service for three consecutive days is deemed a forfeiture of the license, unless for good cause shown, the Commission excuses it.[417]

Operators of motor vehicles within the state of Utah are required to file time schedules with the Commission as well as all changes in such schedules, the schedules to be posted at each station on the route.[418] In a case in that state, an applicant asked permission to operate automobile stages from a specified place to any

[414] Re Rules and Regulations Governing Corporations Operating Motor Vehicles (Ill.) General Order No. 68, July 28, 1921.

[415] Re Rules and Regulations of the Maine Commission Governing Motor Vehicles, effective July 9, 1921.

[416] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 8.

[417] Rule 6, Rules and Regultions of the New Hampshire Commission concerning Jitneys, May 28, 1919.

[418] Rules and Regulations Governing Automobile Stage Lines (Utah) V., VI.

point in several counties named in the application, whenever called upon to do so without being required to operate on schedule time; and also to be given permission to pick up such passengers along the road as might apply for transportation. The Commission declared that permission could not be granted for the operation of such busses without limitation as to the time of arrival or departure at any point and without specified termini. The reason given was that operations under such conditions could not be controlled and regular and orderly service guaranteed to the people.[419]

d. Through routes and joint rates.

The California Commission has been held to have power to establish a second through route and joint rate where the existing through route and rate do not furnish adequate and satisfactory service to passengers. And a railroad company was ordered to establish, in connection with an automobile stage line, a through route and joint rates from points on its line to certain points reached by the stage line, where the distance to the furthest of these points was about 13½ miles and covered by the stage line in one hour, while the existing through route maintained by the railroad company in connection with a steamer took at least nine hours.[420]

XVI. Changes in rates, schedules, tariffs, or service.

Whenever any change is made in the scheduled time of arrival or departure of any motor vehicle at or from any station or stopping place on the line or route of any public carrier of passengers subject to the orders of the Arizona Commission, notice of such change must be filed with the Commission and posted in a conspicuous place at each station or stopping place affected, at least five days before such change is to become effective.[421]

In Maryland, when it is desired to make any change in routing or schedules, formal application must be made to the Public Service Commission for permission and authority to do so. No change of route or schedule becomes effective until a copy there-

[419] Re Lyman (Utah) P.U.R.1919B, 101.
[420] Tarpey v. Southern P. Co. (Cal.) P.U.R.1915D, 621.
[421] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52, 56, 57.

of has been sent to the commissioner of motor vehicles, and an adjustment of charges made as provided by law. Subject to the same proviso, the Public Service Commission reserves the right to arrange or rearrange routes and schedules so as to prevent competition injurious to the public welfare or to prevent unnecessary congestion on streets and highways. Changes in tariff schedules may be made only pursuant to the provisions of § 15 of the Public Service Commission Law relative to changes in tariffs by common carriers.[422]

It is also provided in Arizona that no public carrier of passengers, subject to the Commission's orders, performing a scheduled service shall be permitted to make any change in its schedule or service which would have the effect of reducing the number of motor vehicles operated by it in its transportation service. It is not permitted to substitute one motor vehicle for another when such substitution would have the effect of lessening the seating facilities afforded the public, except upon thirty days' notice after approval by the Commission. It is provided, however, that in case of emergency or for good cause shown the Commission may, in its discretion, permit such change or substitution to become effective on less than thirty days' notice. Any public carrier of passengers, however, in case of accident or disability, may substitute one or more motor vehicles of lesser seating capacity for one of greater seating capacity, when such substitution is made for the convenience, safety, or comfort of the passengers.[423]

The Maryland Commission requires that whenever by reason of accident, disablement, or breakdown of any motor vehicle, operation pursuant to the schedule filed with the Commission and in compliance with the conditions prescribed by the Commission's rules is impossible, "it shall be the duty of the owner or person or persons, association, or corporation lawfully in possession thereof to make arrangements for making available a substitute motor vehicle to take the place thereof, in order that the schedule may be maintained." Such substitute motor vehicle is subject in all respects to the provisions of the Commission rules as far as are reasonably applicable. If a hiring car is used

[422] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 12.
[423] Re Motor Vehicles (Ariz.) P.U.R.1919A, 52, 56.

as a substitute motor vehicle the license tag of the disabled, or otherwise incapacitated, car must be attached beside the hiring license on such substitute car. If the capacity of the substitute car is greater than that of the car regularly used, for which a permit has been issued, a greater number of passengers or a greater weight in freight must not be carried than that authorized in such permit for the regularly used car.[424]

XVII. Security issues.

If the statutes bring operators of automobiles within the definition of common carriers for hire or public utilities, it would seem that the jurisdiction of the Commission over security issues would be as complete as it is over the security issues of railroads or electric railways. So long as lines owned by individuals are operated on a small scale, there would not be much attention paid to financing by the issuance of securities. If the companies grow in size and importance, the regulation of their security issues will undoubtedly be taken up by Commissions having jurisdiction thereover.

In California, at the present time, automobile carriers require permission for the issuance of securities to the same extent as other liabilities.[425]

Automobile transportation companies must, under the California statute, obtain the consent of the Commission for the issuance of securities payable at a period of more than twelve months, where the aggregate amount of the issuance at any one time exceeds $2,500.[426]

XVIII. Depreciation.

The rate of depreciation of automobiles, engaged in carriage of passengers and freight, does not yet seem to have been determined. No fixed rule can probably be laid down, owing to the variety of makes and styles of cars and the difference of conditions under which they are operated. While the rate of depreciation is comparatively high, an allowance of 50 per cent for the

[424] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 17.
[425] Section 6, chap. 213, Statutes of 1917.
[426] Laws of 1917, chap. 213, Re Transportation Co. (Cal.) P.U.R.1918B, 297.

annual depreciation of an auto stage equipment was held excessive, by the California Commission. The Commission said that such a high rate of depreciation would indicate that the particular kind of car used on the line was not economically adapted to the stage business.[427]

XIX. Discrimination.

In its rules and regulations governing automobile transportation, the Arizona Commission has provided that no public carrier of passengers subject to its order, its agents, officers, or employees, "shall charge, demand, collect, or receive a greater or less compensation for a transportation service than that which is prescribed in the tariff, schedule, or statement of such carrier then in effect and on file with the Commission; nor shall any such carrier, its agents, officers, or employees refund or remit, in any manner or by any device, any portion of the rates, fares, or charges so prescribed, except by permission, or upon the order of the Commission; nor shall any such carrier, its agents, officers, or employees extend to any individual, firm, association, or corporation, their lessees, trustees, or receivers, any privilege or facility in the transportation of passengers not regularly and uniformly extended to or enjoyed by the rest of the traveling public; nor shall any such carrier, its agents, officers, or employees, issue, give, or tender any free ticket, pass, or free or reduced transportation, either directly or indirectly to, or for the benefit of, any person not an officer, agent, or employee of such carrier, except that upon application under oath the Commission may, in its discretion, permit the issuance of free or reduced rate transportation for the purposes and to the persons designated in ¶ 2293, chap. 11, title 9, Revised Statutes 1913." [428]

This follows the language of statutes of various states, forbidding discrimination by other carriers. If the operators of automobiles are brought under the jurisdiction of the Commission by language of the statutes including them within the definition of common carriers or public utilities, it would seem that

[427] Re Crown Stage Co. (Cal.) P.U.R.1921A, 747.

[428] Section XV., Rules and Regulations, Re Motor Vehicles (Ariz.) P.U.R.1919A, 52.

without any special Commission rules, they would be governed by these general statutory prohibitions against discrimination.

The California Commission has said: "We believe it is sufficient with reference to transportation companies to confine the issuance of free or reduced rate transportation to the officers, agents, and employees of transportation companies, and to the members of their families and for charitable and patriotic purposes." [429]

In West Virginia, a complaint that jitney bus operators refused to carry passengers who were members of the colored race, was dismissed, but the defendants by their answers admitted this to be unlawful discrimination, and agreed to carry thereafter all persons, regardless of race, color or previous conditions of servitude.[430]

XX. *Valuation.*

Rate controversies have in most states not yet gotten to the point where valuation of the property of automobile carriers has been necessary. When that time arrives there is no reason why they should not take the same course as in valuation of other utility property. There was a long controversy over the question whether any value should be placed on the franchises of other corporations in valuations for rate making; but it is now well settled that nothing will be allowed on account of the franchise, except what it cost. On similar grounds, no doubt the California Commission will not allow in the rate base of an automobile carrier, or "value" of the property for rate making, any amount for "operative rights" further than the expense of securing the certificate of convenience and necessity.[431]

XXI. *Accounts, reports, and statements.*

a. *In general.*

It would seem that Commissions, having general jurisdiction over motor vehicle transportation, would have ample power to require annual or other reports and probably uniform accounting under the direction of the Commission. It has been held

[429] Re Transportation Co. (Cal.) P.U.R.1918B, 297, 311.
[430] Smith v. Nunnelly (W. Va.) P.U.R.1915E, 177.
[431] Re Crown Stage Co. (Cal.) P.U.R.1921A, 747.

that the California Commission has power to regulate the accounts, and to require the filing of annual and other reports of transportation companies.[432] Every public utility operating motor vehicles in Illinois is required to file a statement showing the number and make of the motor vehicle or vehicles, the seating and tonnage capacity thereof, and the schedules upon which they operate or propose to operate; and they are prohibited from operating otherwise than according to such schedule.[433] And it is provided by the rules of the Maryland Commission that it shall be the duty of the owner or person or persons, association or corporation, lawfully in possession of any motor vehicle or line of motor vehicles to which the rules are applicable, to keep an accurate record of receipts from operation, and of operating and other expenses, and to file the same with the Commission on or before the 1st day of April in each year, as of the 31st day of the preceding December, on forms prescribed and furnished by the Commission.[434] In Utah, every automobile corporation operating within the state of Utah is required to keep an accurate record of receipts from operation, and operating and other expenses, and to file the same with the Commission.[435]

b. Reports of accidents.

Several of the Commissions require the reporting of accidents. In Arizona, automobile carriers are required to report to the Commission all accidents arising from, or in connection with, the operation of motor vehicles used in transporting passengers or property for compensation. If the accident results in death or injuries likely to result in death, a report must promptly be made by telegraph or telephone stating the essential facts, such report to be followed by a written report. All accidents resulting in injury to persons or in property damage exceeding the sum of $50 must be reported at once in writing, such report to set forth:

(a) Time and place of accident.

[432] Re Transportation Co. (Cal.) P.U.R.1918B, 297.

[433] Re Rules and Regulations Governing Corporations Operating Motor Vehicles (Ill.) General Order No. 68, July 28, 1921.

[434] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 25.

[435] Rules and Regulations Governing Automobile Stage Lines (Utah) XV.

(b) The name of the company or persons owning the line or car.

(c) The name of the driver.

(d) The state license number, also make and type of car.

(e) Number of passengers, if any, in car involved.

(f) The name or names of persons injured or killed.

(g) Names of passengers and witnesses, if any.

(h) A full and complete report of accident, cause, party or parties responsible, if any; condition of road, weather conditions, speed of car or cars involved.[436]

Every individual or corporation operating motor busses in the District of Columbia must submit to the Commission on blank forms prepared by it, within three days of the occurrence, a daily report of all collisions or accidents resulting in injury to passengers or employees or resulting in disabling the bus involved; also before the tenth day of the following month a monthly summary of all such accidents on a blank form provided by the Commission entitled "Monthly Summary of Transportation accidents." Upon request of the Commission, orally or in writing, the names and addresses of the person or persons killed or injured must be reported and the names and addresses of the witnesses and any other information in possession of the utility concerned, relative to any accident. Upon oral or written request of the Commission or any of its authorized representatives, any bus concerned in or involved in an accident or collision which might be attributed to faulty equipment, must immediately be taken to the garage and held not more than twenty-four hours for inspection by the Commission, no repairs of any sort being allowed in the meantime, unless permitted by the Commission or its representatives.[437] As a condition of granting its approval for the operation of a motor bus route, the Commission has provided: "That reports shall be made to the Commission of all accidents resulting in injury to passengers, employees, or other persons. That every accident resulting in injury to passengers or other persons shall be reported to the

[436] General Order No. 67-A, January 29, 1920.

[437] Re Rules and Regulations (D. C.) Order No. 439, Formal Case No. 103, September 1, 1921.

Commission within three days of its occurrence on blank forms to be furnished by the Commission." [438]

Public utilities operating motor vehicles on the highways of Illinois must give immediate notice to the Commission regarding any accident occasioning the loss of life or limb to any person.[439]

In Maryland immediate notice must be given the Commission of all accidents in which motor vehicles engaged in public transportation to which the Commission's rules are applicable, are involved, where such accidents result in loss of life or injury to property carried, or where the same results in equipment damage sufficient to necessitate the removal of the cars from service for a period of more than twenty-four hours.[440]

Every licensee to operate a jitney line in New Hampshire, must immediately, upon the happening of any accident whereby any personal injury or property damage results, report to the Public Service Commission in detail all of the facts relating to it.[441]

The Oregon Commission requires that accidents shall be reported to the Commission at Salem in writing setting forth the time, place, and cause of the accident, the names and addresses of the owners, drivers, and operators of all vehicles involved, together with the number and names of passengers, with the names and addresses of persons injured or killed, and also the names and addresses of witnesses.[442]

In Pennsylvania, all holders of certificates are required to report to the Public Service Commission any and all accidents resulting in injury to persons or damage to property.[443]

Operators of motor vehicles, under the Utah law, must give immediate notice to the Commission of all accidents in which motor vehicles are involved, where such accidents result in loss of

[438] Re Ultimate Sales & Service Co. (D. C.) Order No. 454, Formal Case No. 106, Dec. 29, 1921.

[439] Re Rules and Regulations Governing Corporations Operating Motor Vehicles (Ill.) General Order No. 68, July 28, 1921.

[440] Re Regulation of Automobiles (Md.) Case No. 939 (1921) Rule 16.

[441] Rule 9, Rules and Regulations of the New Hampshire Public Service Commission Governing Operation of Motor Vehicles, adopted May 28, 1919.

[442] Rule 16, Order No. 798, issued January 13, 1922.

[443] Rule 11, Order No. 18, Governing Automobile Transportation, Adopted October 21, 1919.

life or injury to passengers, employees, or other persons, or in property loss in excess of $50, and accidents resulting in serious personal injury or death, are to be reported to the Commission by telephone or telegraph immediately.[444]

In Washington, accidents resulting in injury to any person, or in damage to any property exceeding the sum of fifty dollars must be immediately reported to the Department of Public Works at Olympia, in writing. The reports must be plainly written or typed on one side of the paper only. The facts required are similar to those which must be furnished in Arizona as above outlined.[445]

XXII. Penal provisions.

In California, every officer, agent, or employee of any corporation, and every other person violating or failing to comply with, or who procures, aids, or abets in the violation of any provision of the act relating to automobile transportation, or who fails to obey, observe, or comply with any order, decision, rule, or regulation, direction, demand, or requirement, or any part or provision thereof of the Railroad Commission, or who procures, aids, or abets any corporation or person in his failure to obey, observe, or comply with any such order, decision, rule, demand, or regulation, or any part or provision thereof is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment.[446]

The Connecticut statute makes the violators of the law or rules and regulations of the Commission punishable by a fine of not more than one hundred dollars or imprisonment of not more than sixty days or both.[447] Violators of the provision of the Maine statute requiring certificates are subject to forfeiture of $100 to the state for each offence to be recovered in a court action by the attorney general. Violators of other provisions of the law or rules

[444] Re Rules and Regulations Governing Automobile Stage Lines, XIV. (Utah).

[445] Section 9, Rule 71, Rules and Regulations of the Department of Public Works of Washington.

[446] Section 8, chap. 213, Statutes of 1917.

[447] Section 8, Act Concerning Public Service Motor Vehicles Operating Over Fixed Routes (1921).

and regulations of the Commission are subject to fine and imprisonment.[448] In Massachusetts, violators of the law are punishable by a fine of not more than one hundred dollars or by imprisonment in the house of correction for not more than two months, or both.[449] The fine for a violation of the provisions of the New Hampshire Act is fixed at not to exceed one hundred dollars.[450] Failure to observe the rules and regulations of the Oregon Commission or the requirements of the Automobile Transportation Act of 1921 is a sufficient cause for the suspension or revocation of the permit of operation.[451]

Many ordinances have been passed by municipalities having jurisdiction over the subject, fixing penalties for violation of their provisions. The ordinance in the Fort Worth case provided that each and every day's violation of any provisions of the ordinance constituted a separate offense, and that one so violating should be guilty of a misdemeanor and punished by fine not exceeding $200, and that in case of conviction of the owner or operator, the Commissioner of fire and police should report the same to the Commissioners, together with his recommendation, and that the Commissioners should consider and act upon said recommendation, and might revoke or suspend such license if they deemed it to be proper.[452]

XXIII. Claims and suits.

The Arizona Commission, being a Corporation Commission, has wider jurisdiction than the ordinary Railroad, Public Service, or Public Utilities Commissions, and, in the exercise of this jurisdiction, requires every insurance company doing a motor vehicle indemnity insurance business in the state to give the Commission prompt notice of any claims or suits that have been instituted against any public carrier of passengers under any policy or contract of insurance in which such insurance company is the insurer and such carrier the insured.[453]

[448] Sections 4 and 5, chap. 184, Maine Laws, 1921.

[449] Section 49 of chap. 159 of the General Laws of Massachusetts.

[450] Section 4, chap. 86, New Hampshire Laws, 1919.

[451] Rule 21, Order No. 798, issued January 13, 1922.

[452] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[453] Section IV., Rules and Regulations; Re Motor Vehicles (Ariz.) P.U.R.1919A, 52.

XXIV. Injunction.

The granting of injunctions is usually assumed not to be within the powers of state Public Service Commissions. This remedy is usually considered one for administration solely by the courts.

The Utah Commission, for example, has been held without power to issue an order restraining the operation of a bus line not possessing a certificate of convenience and necessity.[454] The Commission may itself proceed against a utility by way of injunction through the courts. In such an action by the Utah Commission against the owner of automobiles operating without the permission of the Commission, it is unnecessary for the Commission, in order to make out a *prima facie* case, to introduce testimony to show dedication of the roads over which the cars are being operated, or the filing by the county commissioners of Salt Lake county of a plat with the county clerk, designating the roads as public highways; or to do more than to show their general use by the public for travel.[455]

Illegal operation of automobile vehicles may be enjoined by parties injured thereby. It has been held that the operation of jitneys in defiance of statutory requirements of license and execution of indemnity bonds against liability for injuries, and in a manner to imperil the safety of the public, may be enjoined as a public nuisance by a street railroad that suffers material loss of revenue from the illegal competition; that a street railroad company, although owning a nonexclusive franchise to operate in a city, has a property right that will entitle it to enjoin the competitive operations of jitneys without legislative or municipal authority; and that such an injunction cannot be refused on the ground that a ready compliance with the statute will render it useless, where the city has failed to authorize the issuance of licenses, and where the injunction will eliminate irresponsible operators.[456] It has also been held that an injunction will lie in a proper case to prevent the threatened enforce-

[454] Paulos v. Radebaugh (Utah) P.U.R.1921D, 377.

[455] Public Utilities Commission v. Jones, 54 Utah 111, P.U.R.1919D, 636, 179 Pac. 745.

[456] Memphis Street R. Co. v. Rapid Transit Co. 133 Tenn. 99, P.U.R. 1916A, 834, 179 S. W. 635.

ment of a criminal jitney ordinance, where its validity is involved.[457]

XXV. Estoppel.

It has been held that a claim—in an answer of one proceeded against by a Commission for the operation of automobiles without permission—of the right to use the highways by virtue of the issuance of a certificate of convenience and necessity to another, estops him from asserting them to be other than public highways, especially as against the Commission seeking to serve the interests of the public by exercising jurisdiction over them.[458]

XXVI. Appeal.

It is specifically provided by statute in Connecticut that "any person, association, or corporation aggrieved by any act or order of the Public Utilities Commission may appeal to the superior court in the same manner and with the same effect as any person, association, or corporation may appeal from orders relating to street railway corporations." [459]

The right of appeal is usually taken care of in general provisions of utilities laws relating thereto or else is permitted by way of injunction or certiorari. Parties aggrieved by any action of the Commission must have the right to appeal to the courts, for without the right to such review, the statutes would be unconstitutional.

XXVII. Interstate commerce.

The question whether automobile transportation companies operating across state lines and, therefore, engaged in interstate commerce, are within the jurisdiction of state Commissions is an interesting one. "There are numerous populous localities within this commonwealth near state lines," said the Pennsylvania Commission. "If auto bus or jitney transportation may be engaged in, freed from the regulatory control of this Com-

[457] Auto Transit Co. v. Fort Worth, — Tex. Civ. App. —, P.U.R.1916C, 565, 182 S. W. 685.

[458] Public Utilities Commission v. Jones, 54 Utah 111, P.U.R.1919D, 636, 179 Pac. 745.

[459] Section 7, Act Concerning Public Service Motor Vehicles Operating Over Fixed Routes (1921).

mission, a serious situation, affecting the safety, accommodation, and convenience of the public, would arise, and doubly so if such service is also beyond the supervision of the Federal authorities under existing laws." In upholding its jurisdiction over such a line, the Commission held that jitney or auto bus transportation, largely in the hands of individuals and extending over comparatively short routes, crossing the state line, are more properly left to the regulatory control of the state than to the control of the Federal Government. The Pennsylvania Public Service Company Law does not prohibit common carriers of passengers or property from engaging in interstate transportation, but requires, in the interest of the public welfare, that those proposing to engage in it within the commonwealth shall first secure from the Commission certificates of public convenience.[460]

[460] Chambersburg, G. & W. Street R. Co. v. Hardman (Pa.) P.U.R.1921C, 628.

CHAPTER III.

State Commission Rulings and Policies as Expounded and Applied in Actual Controversies.

In this chapter are collected all the more important rulings and policies, as expounded and applied in actual controversies, relating to the operation of automobile vehicles under Commission control. These cover the period of Commission regulation down to 1922. The later rulings have been abstracted and appear partly as footnotes to those which are given in full. Various points covered by more recent rulings are also brought together under the different subjects discussed. While the conclusions reached by the Commissions do not bind the Commissions to the same extent as do decisions of the courts, they nevertheless furnish a most valuable guide for future action to all who are interested in the development of automobile transportation problems. Very interesting are the discussions of the right of the state and municipalities to regulate this traffic, and the fundamental principles upon which that right rests. The greater part of of the more recent problems, however, are concerned with the question of competition, both as between the automobile and other forms of transportation and as between automobile operators themselves. The policies with reference to this are very rapidly taking shape. The fixing of rates has thus far been left largely to the operators, although in a few cases questions of valuation, return, and rates have been decided. With the organization of large transportation companies to take the place of operation by individuals more attention will probably be given to this phase of the subject.

The references of the preceding chapter are to Public Utilities Reports, but for the convenience of the reader a corresponding list of references to the rulings set forth in full in this chapter, will be found at page 679.

ARIZONA CORPORATION COMMISSION.

IN RE AUTOMOBILE TRAFFIC ON AUTO STAGE LINES.

[Docket No. 236.]

Automobiles — Jitneys — Rules and regulations of service.

Automobile traffic on stage lines between Phœnix and Globe, Arizona, is controlled by the rules and regulations contained in the order of the Commission which fixes the fares to be charged, the number of passengers and weight of property to be carried, the speed to be maintained, and general rules as to safety to be observed by the various classes of cars operated.

[June 15, 1915.]

PETITION by Globe-Phœnix Stage Company for an investigation of the condition with respect to the transportation of persons and property for hire by automobile between Phœnix and Globe. The Commission divided all automobiles engaged in such transportation into two classes, "heavy cars" and "light cars" according as the cars exceeded or were under 2,000 pounds in weight, and prescribed the rates to be charged and the service to be furnished by the different classes.

Appearances: W. L. Barnum for Union Auto Stage Company; Wesley A. Hill for Globe-Phœnix Stage Company; H. Dale Thomas for Gila Valley Auto Transfer Company; Freeman Fikes for Fike's Phœnix-Tempe, Chandler-Mesa Stage and Fike's Auto Livery; Leslie C. Hardy, Assistant Attorney General, for Arizona Corporation Commission.

By the **Commission**: The Globe-Phœnix Stage Company, by its manager, asks, by petition filed March 17, 1915, that the Commission make "a general investigation of conditions existing among all carriers engaged in the transportation of persons and property for hire by automobile between Phœnix and Globe and intermediate points, and issue such orders in the premises as may provide an adequate rate, an adequate and safe service, and such other measures calculated to protect the public health and safety as may seem meet and just."

The petitioner further represents that it is a common carrier engaged in the transportation of passengers and property for hire between Phœnix and Globe and intermediate points; that it

maintains a regular schedule of distance, time, and rates; has expended approximately $10,000 for automobiles, fuel, and accessories, for the purpose of safely and adequately rendering service between Phœnix and Globe; that the transportation in question is over what is known as the Roosevelt Road, a dangerous mountain highway of many steep grades and sharp turns, such road being open to the public and in general used as a public highway; that other persons, firms, or corporations are engaged in a similar business over the same road and between the same points, and that the health, safety, and general welfare of the traveling public demand the issuance of such orders, rules, or regulations as may protect the public and the carriers engaged in this traffic in all respects.

The Commission, by its general order No. 42, addressed to all owners and operators engaged in the transportation of passengers and property for hire by motor vehicle between points within the state, directed them to file with the Commission a statement showing their route and schedule of time and rates, the number and character of automobiles in service, and, in general, such information as the Commission deemed essential preliminary to a formal investigation of the carriage of passengers and property for hire by automobiles within the state.

In response to this order, there have been filed with the Commission reports showing that there are in regular public service motor vehicles between many points in the state. We are dealing here with specific route and termini, and no further reference need be made to general automobile traffic, except that it has become important, both in the distances and points involved and the volume of traffic carried, and has reached such proportions and importance as to demand that the regulating and supervisory powers vested in this Commission be directed to such service, to the end that the public be protected in reasonable rates, adequate and safe service.

Proceeding upon its own initiative, the Commission issued a formal notice of hearing on March 25th, directed to all owners and operators of automobiles and automobile stage lines operating between Phœnix and Globe and intermediate points, setting April 7th as the date for a general hearing and investigation relating to rates, fares, charges, rules, and regulations for serv-

ice of carriage of passengers and property between Phœnix and Globe and intermediate points. At the hearing, the several stage-line operators and owners appeared in person or by counsel. Public notice was given through the press, and an opportunity afforded all in interest to appear and be heard.

From the schedules filed with the Commission, we find that Fike's Stage Line operates between Phœnix, Tempe, Mesa, and Chandler, a 30 minutes' service from 7 o'clock A. M. until 6 o'clock P. M. being maintained between Phœnix, Tempe, and Mesa, and thereafter, until 10:30 P. M., cars leave Phœnix hourly. The distance from Phœnix to Mesa is about 19 miles, and from the schedule it appears the running time is about 50 minutes. Tempe and Mesa are on a direct route to Globe, and the service of the Fike's line is involved in these proceedings to that extent. The passenger rates charged by this line are as follows:

Phœnix to Mesa, one way, $.75.

Phœnix to Mesa, round trip, $1.00.

Phœnix to Tempe, one way, $.50.

Phœnix to Tempe, round trip, $.75.

There are fifteen Ford automobiles in this service.

The Globe-Phœnix stage line operates daily between Globe and Phœnix, 120 miles, via Tempe, Mesa, Goldfield, Roosevelt, Miami, and several unimportant points intermediate. Automobiles leave Phœnix at 8 o'clock A. M., reaching Globe at 6 o'clock P. M. In the reverse direction, they leave Globe at 8 o'clock A. M., arriving at Phœnix at 6:30 P. M. A stop of 30 to 45 minutes is made at Fish Creek at noon, the elapsed running time being about 10 hours and the actual running time approximating 9 hours, or an average of 13.3 miles per hour, not including stops other than that at Fish Creek. The passenger and baggage rates of this line are those shown on pages 955 and 956 of this report applying on "Heavy Cars." Fifty pounds of baggage are carried free with each adult passenger, and 2 cents per pound charged for weight in excess of free allowance. The rate for freight is 5 cents per pound between Phœnix and Globe.

From a statement filed, "The Valley Stage or Livery Company is an association, and makes trips to Globe when they have business enough to pay. The fare is $10 one way, or $18 round trip. Baggage or freight is $3 per hundred. Our autos are

Fords, model T, and we only aim to carry three persons besides the driver. Our schedule is, go when the money is sufficient. We carry no mail, but will land passengers at destination or no charge."

The Gila Valley Auto Transfer Company, another carrier over the Phœnix-Globe route, maintains a daily service similar to that of the Globe-Phœnix Company. Its rates are shown in full on pages 955 and 956 herein.

The Fike's line operates no regular schedule to Roosevelt, but advertises special trips. It has no rates filed with this Commission for the Roosevelt trip. From the schedules of rates, it is clear that they lack uniformity, and, in so far as the schedule of the Valley Stage & Livery Company is concerned, their service is contingent upon securing "enough to pay," but it is not stated whether one, two, or three passengers are considered "enough to pay."

From the testimony adduced at the hearing, it appears that the Globe-Phœnix Stage Company is one of the early lines in this field; that it operates seven passenger cars of the Velie and Cole type.

The Gila Valley Auto Transfer Company has been operating between Phœnix and Globe for some time, and has in service cars of the Cadillac, Packard, and Overland makes.

These two lines occupied this field of transportation alone for some time, and, although were in all respects in competition, maintained uniform rates, and gave substantially the same service as to time and accommodations. Operators of rent cars, so-called, make trips either upon a *per diem* or a flat-rate basis.

The Union Auto Stage Company has more recently entered into the carriage of passengers between Phœnix and Globe. This is a copartnership composed of F. B. Hahn of Globe, L. B. Simmons, Wiley Jones, and Judson King and O. B. Hall, of Phœnix, and has existed since February 27, 1915. This company has five Ford cars in service and operates daily, leaving Phœnix at 8:30 A. M., arriving at Globe at 5 P. M. with a stop of 30 minutes at Fish Creek at noon: time on road 8 hours. Their rates to Tempe and Mesa are the same as the Fike's line, and from Phœnix to Roosevelt, $7.50 one way or $12.50 round trip; between Phœnix and Globe, $10 one way and $18 round trip.

The distance as testified to by a witness of this company from Phœnix is as follows:

To Tempe, 9 miles;
Mesa, 17 miles;
Goldfield, 37¼ miles;
Fish Creek, 61 miles;
Roosevelt, 78 miles;
Globe, 118 miles.

Fifty pounds of baggage is carried free by this line for each full-paying passenger, and for weight in excess of 50 pounds, 3 cents per pound is charged between Phœnix and Globe.

The following lines or companies are operating between Phœnix and Globe: Globe-Phœnix Stage Company, incorporated, using seven passenger cars of a heavy type, giving daily service. Rates $15 one way and $25 round trip. These rates have been departed from at times to prevent business going to other carriers.

Gila Valley Auto Transfer Company, Incorporated, giving daily service with heavy seven-passenger cars. Rates the same as Globe-Phœnix Stage Company.

Union Auto Stage Company, a copartnership, operating Ford cars owned by drivers, conducted by a booking agency for 25 per cent of the receipts for maintaining office, 75 per cent of gross receipts goes to driver owners who pay all car operating expenses. Rates are $10 one way, $18 round trip.

Valley Stage Line, an association, has no regular schedule, rates same as Union Auto Stage Company.

Other persons and companies make trips when loads are secured at varying and various rates. These operators have filed no tariffs or information with the Commission.

The companies above named all render service to all points intermediate between Phœnix and Globe, except the Globe-Phœnix Stage Company and Gila Valley Auto Transfer Company, which do not bid for the Phœnix-Tempe-Mesa travel.

The Valley Stage Line and Fike's Auto Livery handle the Tempe and Mesa business, and make special trips to Roosevelt when sufficient business is secured.

A heavy automobile traffic is carried by automobile lines between Miami and Globe. Not all of those carriers have re-

sponded to the Commission's general order No. 42. This traffic and transportation will be the subject of future inquiry and consideration.

It is altogether clear from the record that, considering the character of the road between Phœnix and Globe with respect to hazards; the chaotic rate conditions prevailing; the danger to life and limb from controllable causes imperatively calls for action by the Commission.

For convenience and brevity, the Globe-Phœnix Stage Company will hereinafter be called the Globe Company; the Gila Valley Auto Transfer Company will be called Gila Company; the Union Auto Stage Company, the Union Company; the Valley Stage Line, the Valley; Fike's Auto Livery, Fike's.

Between two and three years ago the Globe company and the Gila company commenced the regular carriage of passengers between Phœnix and Globe, both companies operating with heavy seven-passenger cars and charging uniform rates. The value of the cars and equipment is stated to be about $11,000, owned by each company.

August 15, 1914, the Globe company entered into a contract with the Arizona Eastern Railroad Company for the transportation of through passengers using the lines of the Southern Pacific Company, whereby the railroads sell through tickets and route overland passengers via Bowie, thence Arizona Eastern to Globe, thence via automobile to Phœnix, thence rail to Maricopa, or *vice versa*. The carriage of passengers under this contract started in November, 1914.

The Gila company has contracts or arrangements with tourists or travel agencies, among which are Raymond Whitecomb, Thos. Cook & Sons, and Frank's Tourist Agency for transportation of passengers between Phœnix and Globe via automobile.

February 27, 1915, the Union company entered the field with Ford cars at rates 33⅓ per cent lower than rates of the Globe and Gila companies, giving daily service, and so reducing the revenue of the Globe and Gila companies as to jeopardize their existence.

The Valley, although not maintaining a regular schedule, is a factor in the business, and Fike's is a competitor for business to Roosevelt, 80 miles from Phœnix. The Roosevelt lake and

government dam at Roosevelt is attracting increasing travel, both local and transient.

The road or highway between Phœnix and Globe is in part county highways and in part the property of the United States government, having been built at a considerable cost by the Reclamation Department preliminary to the construction of the Roosevelt dam. From Phœnix to Goldfield, 37¼ miles, the road is, in the main, level, and offers no unusual obstacles to safe and easy automobile transportation. From Goldfield to Roosevelt, 50 miles, the road is through rough and precipitous mountains, and abounds in steep grades and sharp turns and bluffs that obscure vision beyond 20 to 50 feet. From Roosevelt to Globe, about 40 miles, the road is over rolling mesas and through mountains having heavy grades and many abrupt turns.

Traffic over this road is of considerable volume, and is increasing. Four and six horse teams and motor trucks doing a freighting business, the three auto stage lines, together with ordinary private vehicles, preclude safe transportation at excessive speed.

The general passenger agent of the Arizona Eastern Railroad Company and witnesses for the three active daily auto stage lines are unanimous in their testimony that regulation to insure safety is essential. The testimony of all witnesses was that there should be a limitation on the number of passengers and weight of baggage or freight carried in each car, and that maximum speed should be defined. Witnesses for the Globe and Gila companies and one witness, a driver and car owner of the Union company, maintain that indemnifying bonds should be required.

The management of the Globe and Gila companies assert that a definite rate should be fixed by the Commission, to be observed by all lines and cars operating for hire, and show by their experience that $15 one way and $25 round trip is as low as their type of cars can be operated for.

The Union company maintains that the Ford cars can be operated at a profit on rates of $10 and $18, and the testimony of car owners and drivers supports this position, although it is of record that on the date of the hearing, those who gave this testimony had had but six months' experience upon which to base their conclusions.

Cars in the Globe company's service cost from $3,750 to $4,200 each. Ford cars cost $565 each. For the average cost of the former, seven Ford cars can be purchased. There are five Ford cars in the Union company's service. Considering investment and depreciation charges, it is clear that the cheaper cars can exist under lower rates. The question of upkeep and daily operating costs favor the lighter cars. Tires, fuel, and oil are materially lower in cost in the light cars. True, the heavier cars have greater seating and carrying capacity, but, from the record, we must conclude that the seven passenger cars cannot meet the rate of the lighter cars in cost per passenger mile.

The passenger agent of the Arizona Eastern Railroad Company states that the overland tourist traffic could not be maintained with light cars. The terms of the contract between the Globe company and the railroad provide that the former "will establish, maintain, and operate during the period of this contract a daily automobile stage service from Globe to Phœnix and from Phœnix to Globe over the route known as the Roosevelt dam road; that it will provide and operate over said route a sufficient number of good, safe, and suitable automobiles to transport comfortably and safely over said route all passengers arriving over the rail lines of the railroad company upon the trains of the railroad company at Globe and Phœnix respectively, and holding tickets over said stage line sold them in connection with their rail transportation as hereinafter provided."

The tourist and travel agencies above referred to require safe and comfortable seven-passenger cars.

The Southern Pacific Company has spent large sums in advertising this automobile trip. Passengers are uniformly delighted with its scenic features. A representative of the railroad states that it will, when known, attract a great amount of travel, and will equal the Yellowstone in attracting tourists. It is of value to the state in a material way, and ought to be encouraged.

There is danger, not only to those who travel this route, in a physical sense, in unregulated, unrestricted operation, but there is likewise danger that unregulated competition may result in degenerated service, and an abandonment of service by responsi-

ble carriers, and a discontinuance of the routing of through passengers over this route.

An investment of $600 in an automobile, and with no further responsibility, enables anyone so inclined to become a sufficient factor to practically destroy an industry of substantial worth to the country. There is nothing at this time to prevent anyone desiring to go into the transportation business from carrying passengers between Phœnix and Globe for $5 or any other sum, and when he has ascertained by experiment that he has made a financial failure, from some other optimistic person repeating his mistake, thus making a needed and valuable business an impossibility.

We believe it to be our duty to attach responsibility to this new field of transportation by requiring the filing of a bond; by requiring the filing of a schedule of time and schedules of rates of fare and their observance. Persons, companies, or associations carrying persons and property for hire must assume the responsibility attaching to this business.

From the testimony of experts, it appears that extremely light cars cannot safely maintain as high a speed over the roads in question as heavier cars. There appears to be more danger of them turning over on curves and when obstructions are encountered. It is said that on the level valley roads a light car is more apt to turn over when going at 25 to 30 miles an hour. It is obvious that the light cars will not safely carry the same load as a heavy car, due to their inferior structural strength.

Considerable testimony was given on the question of safe speed. Twenty miles an hour in the valley and from 10 to 15 miles in the mountains was given by several witnesses as a safe maximum speed. Eight, ten and twelve hours elapsed time for the trip between Phœnix and Globe, 120 miles, was suggested. Two hours on an average is lost *en route* on the road in stops for repairs and for other purposes. The speed limit on the portion of the road in the mountains owned by the United States government is limited by the reclamation service to 15 miles an hour. The state laws provide a maximum speed limit of 25 miles an hour. To prevent undue and dangerous competition in speed or time, we shall place a reasonable limitation on both elapsed time and speed, requiring all cars to be kept under such

control when rounding curves or turns as to be stopped within their length.

It has been the practice of operators to carry trunks and other baggage on the footboard of cars, even though it may project beyond the limit of the car. This is condemned as being dangerous, by all witnesses, and we shall require its abatement.

It was the consensus of opinion of experts that baggage carried should be limited to 50 pounds per passenger, although it appears that competition has induced a wide divergence from the rule. We do not believe more passengers should be carried than the seating capacity announced by the makers of the cars, plus 30 pounds per passenger of hand baggage for light five-passenger cars of 2,000 pounds weight or less, and 50 pounds for each passenger in cars in excess of 2,000 pounds weight. A light car may carry not to exceed the driver, four passengers, and 150 pounds of baggage or freight, provided the baggage or freight can be safely stowed, and, if carried on footboards, does not extend beyond same. Heavy seven-passenger cars may carry not more than the driver, six passengers, and 350 pounds of baggage or freight if safely stowed as above provided. Rating passengers at 150 pounds each, cars may carry additional baggage or freight to this amount when less passengers than the rated capacity of cars are carried.

We are of the opinion that this safety measure is important, and we ask the co-operation of the public and the carriers in enforcing this provision. Overloaded cars or cars with projecting loads are a menace to all who use this highway. The practice of over and improper loading has been too prevalent.

The question of rates is one of great importance to the traveling public and those operating these public utilities. It is of record that the large heavy cars cannot operate on less than a $15 rate; that with a minimum rate of $15, the light cars would get no business. It is admitted that the traveling public would all use the heavy seven-passenger cars at equal rates, the service being superior. It is stated that the lower rate induces many passengers to use the lighter and less comfortable cars. If the light cars can profitably haul a passenger for $10, and travelers wish to avail themselves of this rate and the admittedly inferior

service, they should be permitted to do so. Time may show more fully whether this is a reasonable rate or not for this service.

As we now view the question of rates, the two distinct services on the heavy and light cars is analogous to first and second class passenger rates, or possibly more analogous to rail passenger service of ordinary and limited trains.

There may be, between the two classes of automobile service, a difference in time or speed, just as there is between ordinary and limited trains. Safety demands more conservative speed in the lighter cars. We shall classify the automobile service between Phœnix, Roosevelt, and Globe in two classes, for which two rates may be charged. Cars of 2,000 pounds weight or less will be classed "light cars;" cars over 2,000 pounds weight will be classed "heavy cars." Until further orders of the Commission, the rates for these two classes will be as shown in the following tables, which are found and declared to be reasonable:

Light Cars		From Phœnix to	Heavy Cars	
One Way	Round Trip		One Way	Round Trip
.50	.75	Tempe		
.75	1.00	Mesa		
1.50	3.00	Desert Wells	1.50	3.00
2.50	4.00	Goldfield	3.00	5.00
4.00	7.50	Mormon Flat	5.00	9.00
4.50	8.00	Tortilla	6.00	11.00
5.00	9.00	Fish Creek	7.50	14.00
7.50	12.50	Roosevelt	10.00	15.00
8.00	15.00	Kirby	12.00	20.00
10.00	18.00	Miami & Globe	15.00	25.00

Light Cars		From Globe & Miami to	Heavy Cars	
One Way	Round Trip		One Way	Round Trip
3.00	5.00	Kirby	3.00	6.00
3.50	6.00	Roosevelt	5.00	8.00
5.00	9.00	Fish Creek	7.50	9.00
7.50	13.00	Tortilla	9.00	18.00
8.00	14.00	Mormon Flat	10.00	20.00
8.00	14.00	Goldfield	12.00	22.00
9.00	16.00	Desert Wells	13.50	23.00
9.50	17.00	Mesa	14.00	23.50
10.00	18.00	Tempe	14.50	24.00
10.00	18.00	Phœnix	15.00	25.00

Fifty pounds of baggage free with each full fare and 25

pounds free with each half fare ticket. Baggage in excess of free allowance to be charged for as follows: Phœnix to Roosevelt and intermediate points 2 cents per pound; between Phœnix and Globe, 3 cents per pound; Globe to Roosevelt 2 cents per pound.

We note a difference in the rates for express or freight shipments charged by the several companies operating. One line charges $3 per hundred pounds and another $5 between Globe and Phœnix. Rates for excess baggage, freight, and express should be uniform as between the several carriers and the two classes of carriers as herein defined.

No evidence was offered relative to excess baggage, freight, and express rates. We have named excess baggage rates as above noted for the purpose of inducing uniformity. The excess baggage rates suggested herein are subject to further review.

The several lines operating will be expected to confer and suggest reasonable uniform rates for carrying property. A joint schedule can be filed. Failing to come to a common understanding as to such rates on or before August 1, 1915, the Commission will reopen the case as to rates for excess baggage, freight, and express.

The manager of Fike's testified that his Ford cars carried as many as eight passengers at one time, between Phœnix, Tempe, and Mesa. Informal complaint has been made to the Commission of overloading these cars, and also that excessive speed is often resorted to. The highway between Phœnix, Tempe, and Mesa carries a heavy traffic, and it has been informally stated that the ordinary rules and courtesies of the road have scant consideration from drivers between Phœnix, Tempe, Mesa, and Chandler.

The public convenience of such service as is being rendered by motor cars operating between Phœnix, Tempe, Mesa, and Chandler is self-evident. We do not want to be compelled to issue any order or orders that will in any way curtail service, result in increased rates, or place an undue burden upon the carriers. We are of the opinion, however, that public convenience and safety can only be served by requiring all owners and operators of motor vehicles in service for hire between Phœnix, Globe, and intermediate points, including Tempe, Mesa, Chand-

ler, and Roosevelt, to limit the number of persons carried at one time to the seating capacity of the cars as rated by the manufacturers. In addition to the persons carried, not to exceed 150 pounds of property may be carried by light cars and 350 pounds by heavy cars, when cars are loaded to their seating capacity, and, when not so loaded, additional property may be carried not in excess of 150 pounds per seat unoccupied.

All facts of record duly considered, we are of the opinion that public motor vehicle transportation now being rendered is in part inadequate, unsafe, and inconvenient, and that public convenience, necessity, and safety demand an observance of the following order:

ORDER.

This case being at issue upon complaint and notice of the Commission duly served upon all firms, corporations, associations, and persons owning, operating, or maintaining automobiles or automobile stage lines in the transportation of persons and property for hire between Phœnix and Globe and intermediate points in Arizona, and a public hearing having been held, at which the public and all parties in interest were given an opportunity to be heard, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered that all persons and associations of persons, whether incorporated or otherwise, operating automobiles, automobile stage lines, motor cars, or motor vehicles for the transportation of passengers or property for hire between Phœnix, Globe, and points intermediate thereto, shall on or before July 1, 1915, observe and conform to the following rates, charges, rules, and regulations:

1. Motor cars, motor vehicles, and automobiles are hereby classified into two classes; namely, light cars and heavy cars. Cars weighing 2,000 pounds or less are hereby declared to be light cars, and cars weighing in excess of 2,000 pounds are declared to be heavy cars.

2. Each passenger shall be supplied with a ticket, which shall contain and show:

a. A serial number.

b. Date of sale and date of expiration.

c. The rate or price paid for same.

d. Amount of liability of carrier to passenger, and liability for baggage if limited.

3. The following rates, charges, and free baggage allowance are declared to be reasonable and will be enforced and observed until further order or orders of the Commission relating thereto:

Light Cars		From Phœnix to	Heavy Cars	
One Way	Round Trip		One Way	Round Trip
.50	.75	Tempe		
.75	1.00	Mesa		
1.50	3.00	Desert Wells	1.50	3.00
2.50	4.00	Goldfield	3.00	5.00
4.00	7.50	Mormon Flat	5.00	9.00
4.50	8.00	Tortilla	6.00	11.00
5.00	9.00	Fish Creek	7.50	14.00
7.50	12.50	Roosevelt	10.00	15.00
8.00	15.00	Kirby	12.00	20.00
10.00	18.00	Miami & Globe	15.00	25.00

Light Cars		From Globe and Miami to	Heavy Cars	
One Way	Round Trip		One Way	Round Trip
3.00	5.00	Kirby	3.00	6.00
3.50	6.00	Roosevelt	5.00	8.00
5.00	9.00	Fish Creek	7.50	9.00
7.50	13.00	Tortilla	9.00	18.00
8.00	14.00	Mormon Flat	10.00	20.00
8.00	14.00	Goldfield	12.00	22.00
9.00	16.00	Desert Wells	13.50	23.00
9.50	17.00	Mesa	14.00	23.50
10.00	18.00	Tempe	14.50	24.00
10.00	18.00	Phœnix	15.00	25.00

Fifty pounds of baggage free with each full fare and 25 pounds free with each half fare ticket. Baggage in excess of free allowance to be charged for as follows: Phœnix to Roosevelt and intermediate points 2 cents per pound; between Phœnix and Globe, 3 cents per pound; Globe to Roosevelt, 2 cents per pound.

4. All chauffeurs or drivers operating or driving cars in serv-

ice herein referred to shall be at least twenty-one years of age; shall have had at least one year's experience in driving and operating automobiles, and shall be sufficiently acquainted with the road and route to safely operate a car thereon.

5. Cars must not be loaded in excess of their seating capacity as declared or rated by the manufacturers. In addition to the number of persons carried, as provided herein, light cars may carry not to exceed 150 pounds of property, and heavy cars may carry not in excess of 350 pounds of property. Not to exceed 150 pounds additional of property may be carried in lieu of persons in event seats are not occupied.

6. No property shall be carried in or upon cars, on footboards or otherwise, which projects beyond the footboards or fenders of cars.

7. Light cars shall consume not less than ten hours, and heavy cars not less than nine hours actual running time in making the run between Phœnix and Globe. All cars must approach sharp turns and obscured portions of the road under full control and at a speed that will permit stopping cars within their length. Horns must be sounded or other suitable warning given in approaching obscured turns.

8. All carriers herein described shall file their schedule of rates and charges in conformity with this order on or before July 1, 1915, and shall on or before August 1, 1915, file schedules or tariffs covering the transportation of property other than baggage. Time schedules must be filed by all such carriers that have not already filed same, showing in full the time car or cars leave and arrive at Phœnix, Globe, and intermediate points. Such time schedules must be observed.

9. A good and sufficient bond, same to be approved by the Commission, said bond to be in the sum of $2,500 for each car in use, shall be filed in the office of the Commission on or before July 15, 1915. Each such bond shall be made payable to the state or Arizona, and conditioned that the principal thereof shall well and truly observe, obey, and perform all and singular the duties, requirements, restrictions, obligations, rules, and regulations which are herein and which may be hereafter imposed upon him, it, or them by this Commission.

10. Each carrier shall file in the office of this Commission a

public liability policy of insurance of standard limits, carrying in addition thereto a property damage provision, the latter, however, not to exceed the sum of $1,000, the same to be filed on or before July 15, 1915.

11. It is recommended that each common carrier engaged in the class of service herein referred to shall take out sufficient liability policy or accident insurance to cover any passenger hazard occurring.

Arizona Corporation Commission, F. A. Jones, Chairman, W. P. Geary, Commissioner.

Note.—In Re Verde Valley Stage Co. Docket No. 1251–A–425, Decision No. 1231, Jan. 19, 1921, the Arizona Commission held that a certificate issued to an automobile stage line for a period of one year, expired at the end of that time, although the application had requested a certificate for a period of ten years. P.U.R.1921C, 637.

In Re Smith, Docket No. 1268–A–436, Decision No. 1259, March 29, 1921, the same Commission held that the fact that a company operated a stage line after its certificate had expired and after notice to cease operation, constituted sufficient reason for denying the application of the president of the company to operate in his individual capacity. P.U.R. 1921C, 637.

Note.—Connecticut.

Applications for permission to operate jitneys in a city were denied by the Connecticut Commission in Re Bridgeport, P.U.R. 1922B, 193, on the ground that, although frequent jitney service might prove a temporary convenience, it would ultimately result in the abandonment of a street railway with all the consequences of such abandonment upon future public convenience and necessity.

ARIZONA CORPORATION COMMISSION.

RE J. L. BOHN et al.

[Docket No. 395.]

Monopoly and competition — Automobile carriers — Protection against competition.

1. Persons operating automobile stage routes on regular daily

schedules for the transportation of passengers and property for which there is a public demand should be protected from competition by irregular operation by irresponsible persons.

Service — Automobile carriers — Speed — Experienced drivers.

2. Automobiles operated for transportation of passengers and property over highways having heavy grades and sharp curves should be in charge of experienced chauffeurs who have attained the age of twenty-one years, and should be operated at a speed not to exceed 25 miles per hour on straight roads and 12 miles per hour around curves, and at points where the view is obstructed.

[October 9, 1917.]

APPLICATION of J. L. Bohn for authority to increase rates for transportation of passengers on automobile stage lines between Tucson and Silverbell and Hayden, and requesting an investigation into the service furnished by different competitors of applicant. Order denying increase in rates and prohibiting the operation of automobiles at irregular intervals in competition with persons maintaining daily schedules. Operators of automobiles were required to take out and keep in force liability insurance for the protection of their interests and the interests of the traveling public.

Appearances: F. H. Bernard for applicants; H. R. Holbrook, T. D. Cashel, and Ben Ferguson for Commission.

Betts, Commissioner: By a petition filed with the Commission on February 21, 1917, J. L. Bohn and Dora L. Bohn, doing business under the name and style of Bohn's Auto Stage, prayed for an investigation into the handling of passengers and property for hire by automobiles, automobile stage lines, and motor vehicles between Hayden, Arizona, and Tucson, Arizona, and between Tucson, Arizona, and Silverbell, Arizona. It was shown that the petitioners operate a line of automobiles for the handling of passengers and property under a regular daily schedule between the points named and various intermediate points. It was alleged that the present rates are insufficient and inadequate and certain advances were asked for.

The points involved, the distances, present and proposed fares are as follows: [The tables are omitted.]

It was shown by the evidence that the petitioners had been operating this service for a period of something more than a year;

that a regular schedule was maintained, regardless of weather conditions or other difficulties.

The fare between Hayden and Tucson originally was stated to be $7.50, which, by reason of keen competition, though maintained irregularly, had forced the fare to the present figure of $5 between those points. In this connection, it was shown that, in the competition to secure the traffic, little or no regard was had for the published fares filed with the Commission by the petitioners herein; it being stated that, to meet competition, the passengers were carried on the same day and on the same car at varying figures ranging from $3 to $5.

The evidence disclosed that in the conduct of the business between the points herein involved, the operators engaged regularly in the traffic were confronted with the same condition which we have found to prevail at other points served by big mining companies and other industrial enterprises, *viz.*, that on pay day and other special occasions creating heavy traffic, numerous parties, who are not regularly engaged in the handling of passengers and property for hire, entered the business from one to three days, thereby depriving those who operate regularly and under adverse conditions, of the most attractive and profitable part of their legitimate business. These parties engaged irregularly in the traffic also operate without complying with the provisions of the statute and orders of this Commission, with reference to the filing of schedules of fares and classifications and the taking out of liability insurance policies. It was disclosed that such parties often work at their regular occupations during the daytime and drive a car during the following night, which obviously creates a most dangerous condition.

We are of the opinion that this practice should be prohibited, and that only those who have complied with the law and the requirements of the Commission, and who operate a regular autostage service, should be permitted to engage in this traffic at the rates which will be prescribed in this case.

The petitioners submitted evidence and data indicating an investment of about $2,500. By their testimony, it was also shown that the monthly earnings approximate $1,950, and the expenditures about $2,165. Their method of accounting, however, was such that it was impossible to determine the accuracy

of these figures. Offices are maintained at the terminals, and certain of the expenditures for the maintenance of these offices seem to be excessive. It was stated that the cost of maintenance and operation had been materially increased during the last few months, and the data submitted would seem to substantiate these claims.

[1] A great deal of the troubles with which the petitioners are confronted in a financial way, we believe are due to the unnecessary number of cars operated at certain times and under undue competitive conditions, making the business unprofitable. Inasmuch as the petitioners are meeting a public necessity in the handling of passengers and property between the points named, this mode of transportation being in fact the only feasible one, rail transportation being much longer and more expensive, we believe that it should be given a proper measure of protection from the irregular and irresponsible operator.

We are of the opinion that the present schedules of fares properly safe-guarded in this respect, and free from the cutting of rates brought about by the payment of excessive and unreasonable commissions, will enable them to conduct the business on a fair margin of profit, and that thereby the general public will be given the benefit of a lower rate than obviously would be necessary under present conditions.

The testimony disclosed the fact that between Tucson and Silverbell, there is a competing line, and that the operators of this line believe that, with some measure of protection against the irregular operators, the present fares will be adequate.

[2] It was also shown that the road between the points involved contains many heavy grades and sharp curves, and that only experienced chauffeurs of mature age should be employed for the driving of cars. Some accidents have occurred as a result of reckless driving at high speed.

Baggage and property are carried at a rate of $3 per hundred pounds. It was not shown that this practice has caused accidents or inconvenience to the passengers.

From a consideration of the entire record, we are of the opinion that the present schedule of fares between the points involved should be maintained until a more definite and conclusive showing can be made warranting a change.

We also believe that only experienced chauffeurs, who have attained the age of twenty-one years, should be engaged as drivers of cars operating in this service; also that a maximum speed limit of not to exceed 25 miles on straight roads and 12 miles around curves and at points where the view is obstructed should be observed; also that only such persons, companies, or corporations as have complied with the laws and the orders of this Commission in the filing of schedules of fares and classifications, and who have taken out insurance liability policies, as will be hereinafter prescribed, and who maintain a regular daily service, should be permitted to engage in this traffic.

Note.—A similar order relative to the protection of automobile carriers against competition and the character of operators and speed at which cars should be operated was made in Re Automobile Stage Line (Ariz.) Docket No. 400, Oct. 9, 1917.

Note.—Monopoly and Competition.

The fact that automobile passengers traveling over a long route must transfer on the journey is not sufficient reason for permitting a company desiring to transport passengers between certain cities to operate over that portion of the route adequately served by an existing operator. Re Bisbee-Tucson Stage Line (Ariz.) P.U.R.1922B, 764.

Additional motor vehicle freight transportation facilities should be admitted into a territory occupied by an individual operator, when it appears that the present operator will be unable to provide for a large increase in through traffic likely to result from a rerouting of freight shipments; but the present operator should be protected as to shipments consigned to intermediate points. Re Consolidated Stage Co. (Ariz.) P.U.R. 1922A, 592, Nov. 9, 1921.

Territory between two cities recently connected by a new highway was held to be occupied by an auto transportation company which had been operating between the same points over another and more devious route, and such prior occupation was held to be entitled to protection in a proceeding to grant permits to operate over the new highway. Re Union Auto Transp. Co. (Ariz.) P.U.R. 1922A, 600.

More than one applicant should not be granted a certificate of convenience and necessity to operate a motor vehicle over a route which can support only one operator, when the resulting unnecessary competition would cause deterioration of service rendered to the public and the possible bankruptcy of the recipient of the mistaken bounty of the Commission. Ibid.

ARIZONA CORPORATION COMMISSION.

RE MOTOR VEHICLES.

[Docket No. 460.]

Automobiles — Rules and regulations.

Rules, regulations, and requirements for the operation of motor vehicles for the transportation of persons and their baggage in Arizona, relating to rates, service, insurance, classes of transportation, rebating, payment of commissions, change of ownership or control, qualifications of chauffeurs, the noncarriage of explosive and inflammable articles, overcrowding of passengers, nonuse of trailers, limitation as to the carriage of baggage, and certificates of convenience, were adopted by the Arizona Commission.

[May 8, 1918.]

INVESTIGATION concerning the rules and regulations governing the transportation of persons and their baggage for hire.

By the **Commission**: Upon further consideration of the record in the above entitled case and for good cause shown,

It is *ordered* that, effective May 8, 1918, every individual, firm, association, and corporation, their lessees, trustees, or receivers, engaged in the transportation of persons and their baggage, for hire, by motor vehicle, upon the public highways, between points and via routes lying wholly within the state, shall be deemed public carriers of passengers and, as such, subject to the rules, regulations, and requirements hereinafter provided.

Section I.—*Definitions:*

Unless the language or context indicates that a different meaning is intended, the following words, terms, and phrases shall, for the purposes of this order, be given the meanings hereinafter subjoined to them:

The word "state" means the state of Arizona.

The word "Commission" means the Arizona Corporation Commission.

The term "public highway" means any public street, alley, or road in the state.

The term "motor vehicle" means an automobile, an auto stage, a motor bus, or any other self-propelled power vehicle not operated or driven over or upon fixed rails or tracks.

The term "for hire" means a monetary consideration (usually termed the fare) paid for the occupancy, during a journey, of all the available seating space in a motor vehicle or of any seat or seats therein.

The word "transportation" means the receipt, carriage, and delivery of passengers and their baggage, for hire, by motor vehicle.

Section II.—*Insurance Policies:*

Every public carrier of passengers subject to this order shall take out and keep in force, in some company legally authorized to do a motor vehicle indemnity insurance business in this state, a policy or contract of insurance which, inter alia, shall contain the following conditions:

(1) The insurer (the insurance company) shall agree to indemnify the insured (the carrier), within the limits specified in paragraphs (3) and (4) of this section, against any loss which he (the insured) may sustain, by reason of the liability imposed upon him by law, for bodily injuries, including death resulting therefrom, suffered by any person through any accident resulting from the unlawful or negligent operation or the defective construction or condition of any motor vehicle operated by him (the insured) or any of his agents, officers, or employees while such person, at the time of such accident, was a passenger in such motor vehicle.

(2) That when any final judgment has been entered in any court of record in this state against the insured for damages awarded to any person that may have been accidentally injured, or to the legal representative of any person that may have been accidentally killed, through the defective construction or condition of any motor vehicle, or through the unlawful or negligent operation or management thereof by the insured or any of his agents, officers, or employees, while such person, at the time of such accident, was a passenger in such motor vehicle, he (the insured) shall be deemed to have suffered a loss under the policy or contract of insurance, and such loss shall be paid to the plaintiff in the action by the insurer in satisfaction of such judgment, at any time before execution shall issue thereon, unless the insured shall in the meantime pay such judgment or give a bond to secure its payment. In such case the insurer shall be deemed the special

agent of the insured to make payment of the amount of such judgment; and the agency so created shall not be subject to revocation, except by and with the consent of the insured.

(3) The total liability of the insurer for any loss sustained by the insured by reason of bodily injury to, or death of, any one passenger, in any one accident, shall be limited to $5,000.

(4) The total liability of the insurer for any loss sustained by the insured by reason of bodily injury to, or death of, more than one passenger, in any one accident, shall be limited to $10,000.

Section III.—*Separate Policies for Each Vehicle:*

Every motor vehicle used, operated, or employed in the transportation of persons by any public carrier of passengers subject to this order shall be the subject of a separate and distinct policy or contract of insurance; and every such policy or contract shall immediately after execution be filed with the Commission.

Section IV.—*Commission to Be Notified of Claims and Suits Instituted:*

Every insurance company doing a motor vehicle indemnity insurance business in this state shall give the Commission prompt notice of any claims or suits that have been instituted against any public carrier of passengers subject to this order under any policy or contract of insurance in which such insurance company is the insurer and such carrier the insured.

Section V.—*Classes of Transportation:*

Motor-vehicle passenger transportation as comprehended by this order shall be divided into two classes, denominated schedule service and rent service.

Scheduled service shall consist of service performed at regular stated periods, not less than once each day, Sunday excepted, between points or stations situated on a determinate line or route.

Rent service shall consist of any service not included in the definition of scheduled service.

Section VI.—*Rent Service:*

Every public carrier of passengers subject to this order performing a rent service shall file with the Commission and post in a conspicuous place in its home office or principal place of business, where it will at all times be readily accessible for public inspection, a typewritten or printed schedule or statement

describing in a general way the territory to be served and the rates or fares, per mile or per hour, to be charged for the service (see note); Provided, however, that the rate or fare for rent service, when performed between points from and to which a scheduled service is in effect, shall not be less than 140 per cent of the rate or fare prescribed for such scheduled service.

Note.—If there are points in such territory to or from which it is more convenient or desirable to state the rates or fares in definite integral amounts, per passenger, the schedule or statement may so provide.

The rates of fares named in such schedules or statements shall apply to service performed under usual, ordinary, or normal circumstances or conditions; but if such carrier desires to assess a greater charge for service performed under unusual, extraordinary, or abnormal circumstances or conditions the schedule or statement may provide that the rate or fare in such cases will be a definite and fixed percentage of the rate or fare prescribed for service performed under usual, ordinary, or normal circumstances and conditions.

Section VII.—*Schedules Required of Scheduled Service Carriers:*

Every public carrier of passengers subject to this order performing a scheduled service shall file with the Commission and post in a conspicuous place, easily accessible for public inspection, at each station or stopping place on its line or route: (1) A time-table or schedule setting forth, by day and hour, the times at which the vehicles used, operated, or employed in such service arrive at and depart from such stations or stopping places; (2) a table showing the distances between such stations or stopping places; and (3) a tariff showing the rates or fares to be charged for the transportation of passengers and their baggage between such stations or stopping places.

Section VIII.—*Kind of Service Required of New Lines Entering into Competition with Older Established Lines:*

No public carrier of passengers subject to this order shall engage in the transportation of persons and their baggage between points from and to which a scheduled service is being performed by any other public carrier or carriers of passengers, at

the same or a lesser compensation than that which obtains under the tariffs of such other carrier or carriers, unless it shall furnish substantially the same, or a better, service than that which is being furnished the public by such other carrier or carriers.

A transportation service to be considered substantially the same as another, should have the same number of vehicles in service, should have equal seating facilities, and should be operated under the same character of schedule, *i. e.,* twice daily, daily, or daily except Sundays, as the case may be; and any scheduled service that is established at a later date, and is not substantially the same or better than a scheduled service established at an earlier date, between the same points and via the same route, shall, unless otherwise ordered by the Commission, be classed as rent service, and subject to the charges prescribed therefor.

Section IX.—*Notice of Changes in Time Schedules:*

Whenever any change is made in the scheduled time of arrival or departure of any motor vehicle at or from any station or stopping place on the line or route of any public carrier of passengers subject to this order, notice of such change shall be filed with the Commission and posted in a conspicuous place at each station or stopping place affected, at least five days before such change is to become effective.

Section X.—*Change in Measure or Quantity of Service:*

No public carrier of passengers subject to this order performing a scheduled service shall be permitted to make any change in its schedule or service which would have the effect of reducing the number of motor vehicles operated by it in its transportation service, nor shall it be permitted to substitute one motor vehicle for another when such substitution would have the effect of lessening the seating facilities afforded the public, except upon thirty days' notice after approval by the Commission; Provided, however, that in case of emergency or for good cause shown the Commission may, in its discretion, permit such change or substitution to become effective on less than thirty days' notice; and provided, further, that nothing in this section contained shall be construed to prevent any public carrier of passengers, in case of accident or disability, from substituting one or more motor vehicles of lesser seating capacity for one of greater seating

capacity, when such substitution is made for the convenience, safety, or comfort of the passengers.

Section XI.—*Tariffs, Contents and Preparation of:*

The tariffs which are required by this order to be filed with the Commission and posted at the stations or stopping places on the line or route of any public carrier of passengers performing a scheduled service shall be typewritten or printed in type not less than six point, full-face, upon hard calendered paper of good and durable quality, and shall set forth in clear and explicit terms, and in the order named:

(1) The rules and regulations, if any, governing the tariff; (2) a statement of the circumstances or conditions, if any, which in any manner increase or diminish any rate or fare named in such tariff; (3) stop-over privileges and extensions of time limits; (4) baggage rules and allowances and excess baggage rates; (5) children's fares; (6) adult fares, definitely and specifically stated, in cents or in dollars and cents per passenger, together with the names of the stations or stopping places from and to which they apply, arranged in a simple and systematic manner.

Section XII.—*Tariff Changes, How Made:*

A change in or an addition to a tariff shall be accomplished by supplementing or reissuing the tariff; but not more than one supplement may be issued to any tariff without special permission of the Commission.

Section XIII.—*Changes in Rates or Fares, Notice Required:*

No change shall be made by any public carrier of passengers subject to this order in any of its rates or fares, or in any rule, regulation, or provision affecting any of its rates or fares, or in any privilege or facility designed for the convenience, safety, or comfort of its passengers, except upon thirty days' notice to the Commission and the public; Provided, however, that in cases of actual emergency or where real merit is shown, the Commission may, in its discretion, permit such changes to be made on less than thirty days' notice; and provided further, that tariffs of new lines or those covering an extension of service by a line already established may, in the first instance, be issued, filed, and posted upon one day's notice to the Commission and the public.

Section XIV.—*Increases in Fares to be Justified before Publication:*

No public carrier of passengers subject to this order, its agents, officers, or employees, shall increase any of its rates or fares, or alter any rule, regulation, or provision of any tariff so as to effect an increase in any of its rates or fares, under any circumstances whatsoever, except upon a showing before the Commission and a finding by the Commission that such increase is justified.

Section XV.—*Rebating and Granting of Free or Reduced Transportation:*

No public carrier of passengers subject to this order, its agents, officers, or employees, shall charge, demand, collect, or receive a greater or less compensation for a transportation service than that which is prescribed in the tariff, schedule, or statement of such carrier then in effect and on file with the Commission; nor shall any such carrier, its agents, officers, or employees refund or remit, in any manner or by any device, any portion of the rates, fares, or charges so prescribed, except by permission, or upon the order, of the Commission; nor shall any such carrier, its agents, officers, or employees extend to any individual, firm, association, or corporation, their lessees, trustees, or receivers, any privilege or facility in the transportation of passengers not regularly and uniformly extended to or enjoyed by the rest of the traveling public; nor shall any such carrier, its agents, officers, or employees, issue, give, or tender any free ticket, pass, or free or reduced transportation, either directly or indirectly to, or for the benefit of, any person not an officer, agent, or employee of such carrier, except that upon application under oath the Commission may, in its discretion, permit the issuance of free or reduced rate transportation for the purposes and to the persons designated in ¶ 2293, chapter 11, title 9, Revised Statutes 1913.

Section XVI.—*Payment of Commissions:*

No public carrier of passengers subject to this order, its agents, officers, or employees, shall pay any commission to any individual, firm, association, or corporation, their lessees, trustees, or receivers, for the sale of any ticket or fare, unless upon a contract

or agreement in writing between the parties, previously filed with and approved by the Commission.

Section XVII.—*Change in Ownership or Control:*

In case of change of ownership or control of the transportation property, facilities, and service of any public carrier of passengers subject to this order, or when its name is changed, the individual, firm, association, or corporation which takes over such property and facilities and which will thereafter perform such service, if it desires to use the statements, schedules, time-tables, distance tables, tariffs, and insurance policies of the former owner, shall file with the Commission and post in its home office or principal place of business, if performing a rent service, and at the stations or stopping places along its line or route, if performing a scheduled service, an adoption notice in substantially the following form:

This is to certify that .....
(Name of owner)
of ....., ... County, state of Arizona, hereby adopts, ratifies and makes its own, in every respect, as if the same had been originally filed and posted by it, all statements, schedules, time-tables, distance tables, tariffs, insurance policies, or other instruments whatsoever, filed with the Arizona Corporation Commission by ..... prior to .....,
(Name of predecessor)
19....., the beginning of its possession; and the said .....
..... hereby abandons and with-
(Name of predecessor)
draws all of the instruments herein adopted by the said .....
.....
(Name of owner).

(Signed) .....
(Name of owner).

(Signed) .....
(Name of predecessor).

.....

Section XVIII.—*Chauffeurs, Qualifications of:*

No public carrier of passengers subject to this order shall suffer or permit any person to operate, manage, or drive any motor vehicle then and there used or employed by it in the transportation of passengers, unless such person be over the age of eighteen, who is a licensed or registered chauffeur, and who has complied with the requirements of ¶ 5136, chapter 8, title 50, of the Revised Statutes 1913.

Section XIX.—*Explosive and Inflammable Articles Not to be Carried:*

No public carrier of passengers subject to this order, its agents, officers, or employees, shall suffer or permit any of the articles hereinafter specified to be loaded in or upon any motor vehicle then and there used or employed by it in the transportation of passengers:

Liquid nitrogen, dynamite, nitrocellulose, fulminate of mercury, fireworks, firecrackers, torpedoes, high explosives; black, brown, or smokeless powders; ammunition, other than for small arms; explosive projectiles, blasting caps, detonating fuses, primers, time fuses, hydrochloric acid, compressed gases, gasolene in packages, hydrofluoric acid, nitrating acid, sulphuric acid, liquefied petroleum gas, matches in commercial quantities, burnt cotton, calcium phosphide, carbon bisulphide, celluloid scrap, chloride of phosphorous, chloride of sulphur, distillate in packages, naphtha in packages, gas oil, petroleum oil in packages, phosphorous, picric acid, metallic and sulphide potassium, pyroxylin solution; metallic, peroxide, and sulphide sodium; liquid bichloride or tin, trinitrotuluol.

Section XX.—*Overcrowding of Passengers:*

No public carrier of passengers subject to this order, its agents, officers, or employees, shall (except as to children in arms) carry in any motor vehicle then and there used or employed by it in its transportation service, a greater number of passengers than the actual seating capacity thereof will permit.

Section XXI.—*Use of Trailers Prohibited:*

No public carrier of passengers subject to this order, its agents, officers, or employees, shall allow any trailer or other vehicle to be attached to any motor vehicle then and there used

or employed by it in the transportation of passengers, except that if any motor vehicle becomes disabled while it is being used or employed in the performance of a public transportation service, and is unable to proceed on its journey under its own power, it may be towed to any point at which the necessary repairs can be made.

Section XXII.—*Baggage or Articles Projecting over Running Boards:*

No public carrier of passengers subject to this order, its agents, officers or employees, shall permit any article or package, or any piece or parcel of baggage or luggage, loaded in or upon any motor vehicle then and there used or employed by it in the transportation of passengers, to extend more than 8 inches beyond the outer edge of the running board of such motor vehicle.

Section XXIII.—*Cannot Operate without Certificate:*

No individual, firm, association, or corporation, their lessees, trustees, or receivers, shall engage in the transportation of passengers, for hire, by motor vehicle, upon the public highways, between points and via routes lying wholly within the state, until it has obtained from the Commission a certificate indicating that it has complied with the several provisions of this order relating to the filing of statements or schedules and insurance policies. Such certificate shall be in the following form, and shall be displayed in a convenient and conspicuous place in the motor vehicle to which it applies:

State of Arizona

This is to certify that ..... of ..... County, state of Arizona, the owner of the motor vehicle described below, has filed in the office of the Arizona Corporation Commission at Phœnix, Arizona, the several documents required of public carriers of passengers in an order made and entered by said Commission on the 8th day of May, 1918, Docket No. 460.

Trade Name	Factory No.	Type	Year Built	Horse Power
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

Arizona Corporation Commission,
By .....
Secretary.

Dated at Phœnix, Arizona, this ..... day of ....., 19.....

(Seal)

Section XXIV.—*Repealing Clause:*

All orders or parts of orders in conflict herewith are hereby abrogated and repealed, except that where the Commission, after a formal hearing, has passed upon the adequacy or inadequacy of any scheduled service, or where the Commission, after a formal hearing, has prescribed rates or fares between specified points, the provisions of the orders made in such cases shall, in those particulars, prevail.

Jones, Chairman, concurring: I am in full accord with the foregoing order. I am of the opinion, however, that it should not have been made to apply to the transportation of passengers between points situate within the limits of incorporated towns and cities. It is unnecessary to say more than that many towns and cities now cover, by local ordinance, measures dealt with in this order, and that confusion and conflict are apt to result from dualistic regulation.

Note.—Arkansas.

An ordinance requiring every jitney operator to give a bond to pay judgments for damages resulting from negligent operation, while no bond is required of other public motor vehicles or street cars, is not discriminatory class legislation, in restraint of trade, or in denial of the equal protection of the law.

An ordinance requiring a jitney operator to give a bond to pay judgments for damages resulting from negligent operation is not invalid as creating a new liability, since it merely secures payment of damages that may arise under an existing liability. Willis v. Ft. Smith (1916) — Ark. —, 182 S. W. 275. P.U.R. 1916D, 8.

Note.—Operation Prior to Statute.

The California Commission has jurisdiction to entertain a complaint seeking to inquire into, define, and regulate an operative right as such existed prior to the enactment of chapter 213, statutes of 1917 recognizing as bona fide operation at a date prior to May 1, 1917. Watson v. White Bus Line (Cal.) P.U.R.1922A, 620.

In White Bus Line v. A. R. G. Bus Co. (Cal.) Decision No. 5565, Case No. 1206, July 10, 1918, a bus company which applied to a city for a license and paid the license fee, and was told by the proper authority that it could operate, and which began operation April 26, 1917, was held to be under the terms of chapter 213 of the California Statutes of 1917, operating in good faith prior to May 1, 1917, even though the license was not actually issued until after that date. P.U.R.1919C, 922.

CALIFORNIA RAILROAD COMMISSION.

PAUL A. TARPEY, Doing Business under the Name and Style of North End Stage Company,

v.

SOUTHERN PACIFIC COMPANY, LAKE TAHOE RAILWAY & TRANSPORTATION COMPANY, Intervener.

[Decision No. 2494; Case No. 801.]

Commission — Powers — Establishment of through route and joint rates.

The California Commission has power to establish a second through route and joint rate where the existing through route and rate do not furnish adequate and satisfactory service to passengers.

Service — Railroads — Through route and joint rates with automobile stage line.

A railroad company was ordered to establish, in connection with an automobile stage line operating from a point on the railroad, a through route and joint rates from points on its line to certain points reached by the stage line, where the distance to the furthest of these points was about 13½ miles and covered by the stage line in one hour, while the existing through route maintained by the railroad company in connection with a steamer took at least nine hours.

[June 17, 1915.]

APPLICATION by the complainant operating a stage line for an an order compelling the Southern Pacific Company to establish a through route and joint rates between certain points on its line and points reached by the stage line; granted.

Appearances: Theodore J. Roche for complainant; George D. Squires for defendant; Frank S. Oliver for intervener.

Loveland, Commissioner: On April 24, 1915, Paul A. Tarpey, doing business under the name of the North End Stage Line, and operating automobile stages between Truckee and Carnelian Bay, Tahoe Vista, and Brockway, summer resorts located on the northerly end of Lake Tahoe, made application to the Commission asking for the establishment of a through route and joint passenger rates from points on the line of the Southern Pacific *via* Truckee to the resorts named above, alleging that public convenience and necessity require their establishment.

The Southern Pacific Company in its answer denies the allegations of complainant and declares that there is now in effect a satisfactory through route and joint rates in connection with the lines of the Lake Tahoe Railway & Transportation Company *via* Tahoe tavern and steamer. The Lake Tahoe Railway & Transportation Company intervened, maintaining that the present arrangements in connection with their line to Carnelian Bay, Tahoe Vista, and Brockway provide a comfortable, convenient, and efficient service, and denies that the convenience and necessity of the traveling public demand the establishment of a second route and rates *via* the North End Stage Line.

The complainant introduced evidence tending to show that travelers over the circuitous route of the Lake Tahoe Railway & Transportation Company incur much needless expense and loss of time which would be obviated if a through route and joint rates were established in connection with the North End Stage Line.

The record discloses the following facts: The distance from Truckee to Brockway, the most distant of the three resorts, is approximately 13½ miles, over a good mountain road, and can be easily covered by auto stage in one hour, while Carnelian Bay and Tahoe Vista can be reached in forty-five and fifty minutes, respectively. Under the present through route arrangement passengers destined Carnelian Bay, Tahoe Vista, or Brockway, leaving San Francisco on train No. 6 at 7 P. M., arrive Truckee 6:50 A. M., leave Truckee 7:15 A. M., *via* the Lake Tahoe Railway, arrive Tahoe tavern 8:15 A. M., leave Tahoe tavern about

10 A. M., on a steamer moving in a southerly direction around the lake, and do not reach Brockway until 4 o'clock in the afternoon, thus taking approximately 9 hours to reach a point 13½ miles from Truckee, which is reached in one hour by auto stage. The situation is still more difficult and expensive to passengers holding Lake Tahoe Railway & Transportation Company tickets, who make the daylight trip from San Francisco and reach Truckee at 7:30 P. M., as there is no through connection and a stop over night is necessary at either Truckee or Tahoe tavern for the morning boat, arriving at Brockway at 4 P. M., or a journey of twenty hours from Truckee as against the direct auto stage connection of one hour. In the opposite direction the bulk of the travel leaves Truckee for San Francisco at 9:20 P. M., requiring departure from Brockway on the boat at 4:20 P. M., or five hours prior to the leaving time of the train from Truckee. In the months of July and August special boats operate between Tahoe tavern and Brockway, affording improved service to inbound traffic, but practically no relief to outbound business. Under the present through route arrangement which requires from five to twenty hours to travel between Truckee and Carnelian Bay, Tahoe Vista, or Brockway, it is impossible to make week-end trips; this unsatisfactory situation would be overcome by using the auto stage from Truckee. Testimony was introduced by applicant to the effect that there was much complaint during the season of 1914 regarding the service rendered, and that many persons holding return tickets *via* the steamer and rail line did not use them, preferring to pay a second fare on the auto stage to Truckee rather than waste the hours required to make the circuitous journey *via* Tahoe tavern. It was also brought out that there is a heavy seasonal travel to points at the northerly end of the lake, one resort handling from 700 to 1,000 guests per season, and that there was much complaint from these persons because through transportation was not available over the shorter and more direct route.

Intervener's testimony was directed to an explanation of the time schedules and the endeavor put forth to render a service satisfactory and convenient to its patrons, and an effort was made to prove that the facilities afforded were not unreasonable. It

was admitted, however, that the running time *via* its line between Truckee and these resorts could not be materially reduced.

Defendant, Southern Pacific Company, in its oral argument and brief, resisted the application on the ground that the present through route was satisfactory from a service standpoint, and that, therefore, the Commission had no jurisdiction under § 33 of the Public Utilities act to establish a second route. This point has already been decided in case no. 250, Central California Traction Co. v. Atchison, T. & S. F. R. Co. 1 Cal. R. C. R. 632: "Considerable difference of opinion seems to exist between the attorneys for the parties herein over the meaning of § 33 of the Public Utilities act. The meaning of this section seems to be clear. Under it, this Commission can establish a through route and joint rates when, after hearing, it is found that a public convenience and necessity exists therefor, either by reason of the fact that the rates, fares, or charges in force are unjust, unreasonable, or excessive, or that no satisfactory through route or joint rate or fare exists. What are excessive and unjust rates, and what is an unsatisfactory or a satisfactory through route and joint rate, either or both, is for this Commission to determine at the hearing which is provided for in § 33."

Also on page 636: "I believe that under the provisions of § 33 of the Public Utilities act this Commission has the general power to grant relief demanded herein under a proper state of facts, and I believe that if public convenience and necessity require the establishment of the through route and joint rates, that the defendant cannot urge that such rates as to it are unreasonable."

After careful consideration of all the testimony, exhibits, and briefs, I find as a fact that the present through route arrangement has not afforded, and does not afford, adequate and satisfactory passenger service between Truckee and Carnelian Bay, Tahoe Vista, and Brockway, and that a through route and joint rates for passenger traffic should be established between all points on the line of the Southern Pacific Company, as shown in § 10 of its Local and Joint Excursion Tariff No. 33, Cal. R. C. R. No. 2098, and Carnelian Bay, Tahoe Vista, and Brockway, points on Lake Tahoe, in connection with the North End Stage Line operated by Paul A. Tarpey, the complainant in this case.

The conclusions reached in this case do not necessarily estab-

lish a precedent, as § 33 of the Public Utilities act does not contemplate the establishment of through route and joint rates whenever requested, and the Commission will only exercise its authority when the circumstances and conditions in each particular case prove that the public convenience and necessity demand the establishment of such through route and joint rates.

No satisfactory testimony was offered with reference to the rates to be established, but the same should not be in excess of those in effect in connection with the Lake Tahoe Railway & Transportation Company. Should carriers fail to perfect an adjustment, the question of the rates to be charged may be referred to this Commission for consideration.

Note.—In Calistoga & C. L. Stage Line v. White Transp. Co. P.U.R.1918E, 821, the California Commission held that an automobile stage line could not resume operation after temporarily discontinuing service by disregarding its time schedule during the winter months, without consent of the Commission, except by securing a certificate of public convenience and necessity from the Commission and permits from governing bodies of all political subdivisions in the manner provided by statute.

In Re Halstead, P.U.R.1919A, 676, the California Commission held that taxicab or "for rent" service, which was not under the jurisdiction of the Commission, contemplated the renting of the entire car on an hourly, trip, or mileage basis, irrespective of the number of passengers, and not charging a flat rate to each person carried.

An auto bus company operating a through service in good faith on and prior to May 1, 1917, the effective date of the California statute regulating such companies, has no right by reason of such operation to later initiate a local service between intermediate points on a route so traversed in through service, without first obtaining a certificate of public convenience and necessity therefor from the Railroad Commission. Watson v. White Bus Line (Cal.) P.U.R. 1922A, 620.

A lease of the right to operate certain motor bus trips under a certificate of convenience and necessity held by the lessor, which results in dividing the responsibility of a legitimate holder of an operative right and without according any additional or improved service, being intended only to operate to the profit of the holder of an operative right, is against public interest and should not receive approval. Re Held (Cal.) P.U.R.1922A, 857.

CALIFORNIA SUPREME COURT.

EX PARTE CARDINAL.

[Cr. 1948.]

(— Cal. —, 150 Pac. 348.)

Constitutional law — Arbitrary classifications — Jitneys.

1. A municipal ordinance regulating automobiles known as jitney busses, engaged in the transportation of passengers on the public streets for a charge of 10 cents or less, is not an arbitrary classification of vehicles, because based on the fare charged; nor is it a discrimination against this species of vehicle; and such regulation is warranted by the Constitution.

Automobiles — Regulation of jitney busses — Operator to have experience.

2. A municipal ordinance requiring one to have thirty days' experience in the operation of an automobile in the city before being permitted to operate a jitney bus for the transportation of passengers on the public streets is not invalid as interfering with a right of a person to pursue a lawful calling, but is a reasonable exercise of the police power in the interest of public safety.

Automobiles — Regulation of jitney busses — Owner to furnish security.

3. A municipal ordinance requiring the owners of jitney busses engaged in the transportation of passengers to furnish security in the shape of a bond or an insurance policy, in a reasonable amount, to indemnify persons who may be injured or damaged by negligent or illegal operation, is a proper exercise of the police power for the protection of the public.

Automobiles — Requirement that owner of jitney furnish security in sum of $10,000 — Reasonableness.

4. A municipal ordinance requiring the owners of jitney busses engaged in the transportation of passengers to give a bond in the sum of $10,000 conditioned that he will pay all damage that may result to any person or property from the negligent operation or defective construction of the jitney bus, or from any violation of law; or to keep in force an insurance policy with a total liability of $10,000 insuring the owner against loss by reason of damage that may result to any person or property from the operation of the jitney bus,—is not unreasonable.

Automobiles — Requiring owners of jitney busses to file bond of surety company.

5. A requirement that persons engaged in the operation of jitney busses for the transportation of passengers shall furnish a bond given by a responsible surety company authorized to do business under the laws of the state, to the exclusion of personal sureties, is a valid provision.

[June 28, 1915.]

IN Bank. Petition for habeas corpus against the chief of police of San Francisco to inquire into the validity of a municipal ordinance regulating the operation of jitney busses; writ discharged and the petitioner remanded to custody.

Appearances: Jacob P. Wetzel for petitioner; Alexander O'Grady for respondent.

Angellotti, Ch. J., delivered the opinion of the court:

The petitioner is held in custody by the chief of police of the city and county of San Francisco under complaint charging him with a violation of ordinance No. 3212, N. S., in operating an automobile as a jitney bus on a public street in San Francisco without first procuring and giving a bond as required by § 4 of said ordinance.

It is contended that the ordinance as a whole is invalid, and, even if this be not so, that many of its provisions, especially § 4, under which petitioner is being prosecuted, are invalid.

The ordinance is purely regulatory in nature, one designed to regulate the use of what is termed the "jitney bus" on the public streets of the city and county of San Francisco. By § 1 of the ordinance, a "jitney bus" is defined to be "a self-propelled motor vehicle, other than a street car, traversing the public streets between certain definite points or termini, and conveying passengers for a fixed charge of not more than 10 cents between such and intermediate points, and so held out, advertised, or announced," and the same is declared to be a common carrier. The ordinance provides that, before operating any jitney bus on any public street, the owner or lessee shall apply for and obtain a permit from the Board of Police Commissioners, give a bond or provide a policy of insurance, and pay a certain license fee. The permit is to be granted upon an application showing certain things. There are numerous provisions as to the management and operation of such jitney busses; the ordinance being obviously, as we have said, purely regulatory in its nature.

[1] The first substantial objection made to the ordinance is that no proper basis can be found for an attempt to specially regulate the use of the kind of vehicle defined as a jitney bus; that the attempt here to regulate the use of the jitney bus in the manner prescribed, without including all other motor vehicles

used on the streets, and especially those used for the carriage of passengers, is a discrimination against the so-called jitney bus that is not warranted under the Constitution. It cannot successfully be disputed that the city and county of San Francisco has the right, in the exercise of its police power, to enact such reasonable regulations for the safety of the public as are not in conflict with general laws, to regulate the use of vehicles on its public streets. While in doing this it may not arbitrarily discriminate against any species of vehicle, it may classify vehicles for the purpose of regulation in such manner as is reasonable, in view of the character and manner of use and the danger to the public to be apprehended, and such classification must be upheld by the courts unless it is manifestly unreasonable or arbitrary. No reasonable person will dispute the proposition that, in view of many circumstances peculiar to automobiles and their use, regulations specially applicable thereto will be sustained. And it is manifest that as to automobiles there may be circumstances existing, by reason of the manner and character of their use on the streets, that will warrant, in the interest of the safety of the public, special regulations as to those used for a particular purpose and in a particular way. The only limitation in the matter of any such classification is that the same must be reasonable—that there is some difference between the vehicles embraced in the class attempted to be created, and other vehicles, that bears a proper relation to the regulations prescribed for those coming within the class. If the classification is reasonable, including all that may fairly be said to be similarly situated and affecting alike all of those, there is no forbidden discrimination. The question of classification is primarily one for the legislative power, to be determined by it in the light of its knowledge of all the circumstances and requirements, the presumption in the courts is in favor of the fairness and correctness of the determination by the legislative department, and the courts are not privileged to overturn that determination unless they can plainly see that the same was without warrant in the facts. This is but a statement of well-settled doctrines applicable in considering such questions as the one before us. Applying them here, we entertain no doubt whatever as to the power of the board of supervisors of the city and county of San Francisco to make special

regulations relating to the use on the streets of such vehicles as are described in § 1 of the ordinance, and therein termed jitney busses. It is argued that the charge of 10 cents or less for passage is no proper criterion by which to classify for such a purpose as that of this ordinance. It may well be, however, that the special danger to the public sought to be guarded against is confined to just the class of vehicles described, *viz.*, automobiles used on the public streets for the carriage of passengers at a very small charge, the same charge, or only a few cents in excess of the same charge, as that made on street cars. If this be so, it was necessary to specify some amount of fare as the dividing line, and it cannot be held that the supervisors acted unreasonably in fixing that amount at 10 cents. In legislating it is often necessary, for the purpose of definiteness and clearness, that some amount or number be specified as the dividing line, and the determination of the legislative body in that regard is practically conclusive, unless it be obviously unreasonable. It is the "low fare" automobile for the carriage of passengers on the streets of San Francisco that the ordinance is designed to regulate. The real question in this connection is whether there is sufficient distinction between the operation on the public streets of these "low charge" automobiles for the carriage of passengers and the operation of self-propelled motor cars on which a much higher charge is made, to warrant the imposition of the special regulations made by this ordinance. It is a matter of common knowledge on the part of those familiar with conditions in our large cities that the comparatively recent introduction of this class of vehicle, commonly known as the "jitney," for the carriage of passengers on the public streets, for a charge closely approximating that made on street cars, in view of the almost phenomenal growth of the institution, has made clearly apparent the necessity of some special regulations in order to reasonably provide for the comfort and safety of the public. It may well be that the board of supervisors concluded that, in view of the number of this class of public conveyances that were operated upon the public streets, especially upon the principal streets already occupied almost to overflowing during the hours of heaviest traffic by street cars and other vehicles, as well as by pedestrians at street crossings, the speed at which they would naturally be operated in order to make

them pay on such a low rate of fare, and the probable lack of substantial financial responsibility on the part of very many undertaking to operate such vehicles, special regulations as to condition of car, competency and fitness of operator, and the operation of the car, as well as security to protect against improper or negligent operation, were essential to the public safety. We certainly cannot say that the legislative body was not justified in so determining.

[2] A provision of the ordinance is to the effect that it shall be unlawful for any person to operate a jitney bus on the streets "unless said person shall have had at least thirty days' experience in the operation of an automobile in the city and county of San Francisco," and other provisions considered in connection with this, may reasonably be construed as providing that the Police Commission shall not grant a permit to operate a jitney in the absence of such experience on the part of the operator. These provisions are asserted as unwarrantably interfering with the right of a person to pursue a lawful calling. If we assume their invalidity, it would not necessarily follow that the whole ordinance is void. But we do not think that they are invalid, for we cannot say that it is an unreasonable exercise of the police power in the interest of public safety to require that the operator of a vehicle of this character for the carriage of passengers on the public streets of a city like San Francisco should have the practical knowledge of the streets and grades of the city with reference to the use of automobiles thereon that it may reasonably be assumed can be acquired only by operating such a vehicle thereon. In view of the difference in the facts, we do not consider the case of Smith v. Texas, 233 U. S. 630, 58 L. ed. 1129, L.R.A.1915D, 677, 34 Sup. Ct. Rep. 681, as at all in point. As to the correctness of the principles enunciated in the opinion in that case there can be, of course, no dispute.

An examination of the ordinance discloses to us nothing that would warrant us in holding the ordinance as a whole to be invalid. We say "as a whole," for we are not called upon in this proceeding to do more than to determine, if the ordinance be a valid enactment at all, whether the particular provision that petitioner is charged with violating, *viz.*, § 4, is valid. We are not here concerned, for instance, with any question as to the

validity of the provisions relative to the forfeiture of any permit granted. No attempt has been made to take away any permit from petitioner, and he is now in no way affected by any of these provisions. If invalid for any reason, which we must not be understood as conceding, they simply fall without affecting any other part of the ordinance.

[3, 4] We come now to the particular provision of the ordinance for an alleged violation of which petitioner is held, *viz.*, § 4. It is substantially provided therein that, "in order to insure the safety of the public," it shall be unlawful for any person to operate a jitney bus, unless there is given and in force either: (1) A bond of the owner or lessee of said jitney bus with a responsible surety company or association authorized to do business under the laws of the state of California, in the sum of $10,000, conditioned that the owner or lessee of "said jitney bus" "will pay all loss or damage that may result to any person or property from the negligent operation of or defective construction of said jitney bus, or which may arise or result from any violation of any of the provisions of this ordinance or the laws of the state of California;" or (2) a policy of insurance in a company authorized to do business in the state of California, with a total liability of $10,000, insuring said owner or lessee against loss by reason of damage that may result to any person or persons or property from the operation of said jitney bus, which policy shall guarantee payment, within the limits prescribed, *viz.*, an aggregate liability of $10,000, and a limitation of $5,000 for any one person killed or injured and one of $1,000 for the injury or destruction of any property, of any final judgment rendered against said owner or lessee. Other provisions are immaterial here.

We see no reason to doubt the power of the state, or any county or municipality, in the exercise of its police power of regulation, to require security in the shape of a bond or insurance policy from its licensees in all cases where the giving of such security may fairly be held to be a reasonable requirement for the protection of the public. If the power to do this exists, we are satisfied that it cannot properly be held by the courts that the requirement of such security by the ordinance before us was an unreasonable exercise of its power by the board of supervisors of San

Francisco. In Freund on Police Power, it is substantially stated that a requirement of a bond to secure faithful compliance with police regulations and the satisfaction of liabilities that may arise from their violation, or to serve as an indemnity fund for persons who have suffered by the fraudulent conduct of the business, appears to be permissible, as a subsidiary measure of police control, wherever a license may be required by way of regulation. Section 40. The most common instance of the requirement of such a bond is probably that of the licensed liquor dealer, and a requirement that he give a bond for damages that may be caused third persons by illegal sales is declared valid. See Black, Intoxicating Liquors, § 46; Woollen & T. Intoxicating Liquors, § 149. In Wiggins v. Chicago, 68 Ill. 372, a requirement of a bond of $1,000 from a licensed auctioneer conditioned for a due observance of an ordinance regulating the business was sustained as a reasonable requirement. In Hawthorne v. People, 109 Ill. 302, 50 Am. Rep. 610, an act required of anyone operating a butter and cheese factory among the farmers of a neighborhood a bond, intended, as the court substantially said, to secure those who intrust their property to the keeping of the manufacturer against fraud or misappropriation by him of their property, just as the saloon keeper may be required to give security that he will not violate the law and thus inflict injury on his customers. The requirement was upheld. On principle it would seem that security for the protection of those who may be injured or damaged by the negligent or illegal operation of a business or calling subject to police regulation may be required, wherever such a requirement is not unreasonable; the requirement being, as already suggested, an exercise of the police power of regulation for the protection and safety of the public. We have found no decision that holds otherwise. Of course, no such interference with the right of a person to carry on a legitimate business would be valid except where justifiable as a proper exercise of the police power of regulation, and the decision in the case of People ex rel. Valentine v. Berrien Circuit Judge (People ex rel. Valentine v. Coolidge) 124 Mich. 664, 50 L.R.A. 493, 83 Am. St. Rep. 352, 83 N. W. 594, in which an act requiring all merchants who sell farm produce on commission to execute a bond in the sum of $5,000 conditioned for the faithful performance of their contracts was held

to be unconstitutional, was put upon the ground that there was nothing in the particular business there involved that required regulation, as did hack drivers, peddlers, saloons, etc., but that the business was a legitimate commercial business, for the carrying on of which neither license fee nor bond could be required. Gibbs v. Tally, 133 Cal. 373, 60 L.R.A. 815, 65 Pac. 970, and the cases following it, are not at all in point. The statute there held invalid was one requiring the owner to give a bond to secure laborers, materialmen, and subcontractors, with whom he had no contract, against default on the part of their debtor, the building contractor. No foundation for the imposition of any such burden on the owner, who was entirely without responsibility, legal or moral, to those choosing to deal with the contractor, could reasonably be found. In the case at bar we have persons undertaking to pursue upon the public streets of the city and county of San Francisco an occupation that if negligently conducted is fraught with danger not only to those who may be passengers, but also to the public generally upon those streets. The occupation is one that may properly be regulated by the public authorities, and the insistence on a bond or other security in a reasonable amount to indemnify those who may be injured by the negligent or illegal operation of the business appears to us not to be beyond the range of reasonable requirement.

[5] It is suggested that the requirement that the bond be given by a responsible surety company or association authorized to do business under the laws of the state of California, to the exclusion of personal sureties, renders the provision invalid. We know of no constitutional right that one has to give any particular kind of security. A legislative body having the right to require the giving of security necessarily has the right to prescribe the kind that shall be given, with the limitation always, of course, that its provisions in this regard shall not be unreasonable, or based upon any other consideration than its conclusion as to what is necessary for the protection of those concerned. We had occasion, in San Luis Obispo County v. Murphy, 162 Cal. 588, 591, 123 Pac. 808, Ann. Cas. 1913D, 712, to consider an act providing for the payment by the state, county, etc., of the premiums on official bonds of state, county, etc., officers when those bonds were procured from such a company or association. The act was upheld

against the objection that it discriminated in favor of such bonds and against bonds with personal sureties. As one of the grounds of decision, it was substantially said that the theory of the legislature probably was that the public interests would be better protected by such bonds, and that, taking into consideration the provisions of our law relating to the conditions and official supervision under which such surety companies are allowed to transact their business within this state, it might well be concluded that the surety company bond is a better and safer bond so far as the public interest is concerned. The likelihood of finding the security given insufficient from one cause or another when the time for collection arrives is obviously much greater in the case of the personal surety than in that of the company or association engaged in the business only with the certificate and under the constant supervision of officers of the state. Then, too, the necessity of giving and maintaining such a bond may well be considered as more conducive to a careful operation of his business by the jitney bus owner or lessee than would otherwise be had. We see no warrant for holding that the supervisors were not justified in concluding that such a bond as that prescribed in the ordinance was essential.

It is not claimed that the complaint does not sufficiently state a public offense, if § 4 of the ordinance is a valid enactment.

No other point is made against the ordinance that calls for discussion here. We are unable to perceive any ground upon which it may fairly be held that § 4 of the ordinance is not valid.

The writ is discharged, and the petitioner remanded to custody.

We concur: Shaw, J.; Melvin, J.; Sloss, J.; Lorigan, J.; Lawlor, J.

Note.—The purchaser of an automobile stage line which was in operation prior to May 1, 1917, must obtain a certificate from the Commission and permits from the local authorities before he can continue to operate the purchased property. Re Fuller (Cal.) Decision No. 5166, Application No. 3457, Fed. 27, 1918. (P.U.R. 1918E, 793.)

The certificate of an individual operating a bus line subject to the jurisdiction of the Commission, who does not operate upon his regular published schedule or in accordance with the rules of the Commission, may be revoked. Peninsula Rapid Transit Co. v. Friend (Cal.) Decision No. 5205, Case No. 1192, March 14, 1918. (P.U.R. 1918E, 793.)

CALIFORNIA SUPREME COURT.

WESTERN ASSOCIATION OF SHORT LINE RAILROADS

v.

RAILROAD COMMISSION OF STATE OF CALIFORNIA.

UNITED RAILROADS OF SAN FRANCISCO

v.

RAILROAD COMMISSION OF STATE OF CALIFORNIA.

[S. F. 7614, 7641.]

(— Cal. —, 162 Pac. 391.)

Public utilities — Automobile common carriers — "Other transportation companies."

Automobile common carriers of freight and passengers over routes on public highways between cities and other points are transportation companies subject to regulation by the California Commission, under the provision of the Constitution, art. 12, § 22, as amended in 1911, giving the Commission power to regulate railroads and "other transportation companies."

[Opinion rendered December 14, 1916. Modification of opinion January 11, 1917.]

In banc. Application for writ of mandate by railroad and electric railway carriers against the California Railroad Commission to review orders dismissing complaints to subject automobile common carriers to the jurisdiction of the Commission; writ issued.

For the opinions of the Commission, see P.U.R.1915F, 997, 1012.

Appearances: William M. Abbott, William M. Cannon, and Clarence M. Oddie, all of San Francisco (Morrison, Dunne, & Brobeck, of San Francisco, of counsel), for petitioners; Douglas Brookman, of San Francisco (Max Thelen, of San Francisco, of counsel), for respondent.

Henshaw, J., delivered the opinion of the court:

Petitioner, Western Association of Short Line Railroads, is a corporation organized to promote the best interests of the short, independent railroads, steam and electric, operating in the state of California and in other states. Fifteen of such California railroads are members of this corporation. It made application to the respondent Commission to regulate, within the law, the transportation business of the so-called Wichita Transportation Company, which company admitted that it was engaged as a common carrier in the business of transporting freight in motor trucks on the public highways of the state of California between the city of San Diego, in San Diego county, and the city of El Centro, in Imperial county, as well as to intermediate and other points in this state. The United Railroads of San Francisco, petitioner, made like request of respondent Commission for regulatory orders governing the conduct of the Peninsula Company, and showed that petitioner was operating an interurban electric car line, extending from Fifth and Mission streets, in San Francisco, to the city of San Mateo; it was so operating under franchises obtained from the proper authorities; that the Peninsula Company was regularly operating and maintaining a system of automobile buses, carrying from sixteen to twenty passengers each, running upon regular schedule from the point of departure of petitioner's cars in San Francisco to their terminus in San Mateo, and making return trips from San Mateo to San Francisco in like manner, and upon a route paralleling as closely as possible the line of the petitioner's electric railway; that in so operating they charged for the service the identical through fare charged by the petitioner, and similar lesser fares for intermediate points; that the Peninsula Company was a common carrier, a public utility, and a transportation company within the meaning of the law, power to regulate which and the duty to regulate which were conferred by law upon the Railroad Commission.

The Railroad Commission declined to entertain jurisdiction of these petitions, upon the ground that the law had not vested in it jurisdiction so to do. Mandate was then sought from this court, and the single question thus presented is that indicated: Does the Constitution, or do the legislative enactments of the state, vest

the power of regulation over such transportation companies in the Railroad Commission?

In denying these applications the Railroad Commission filed an elaborate opinion in which the question of power was discussed under two heads: First, the question of the constitutional grant of power; second, the question of the legislative grant of power. Application for mandate before this court was in the first instance denied, it appearing to the court that the Commission had reached and expressed a satisfactory conclusion upon both propositions. Subsequently this alternative writ of mandate was issued for further consideration of the first proposition; namely, whether or not the Constitution has conferred upon the Commission regulatory powers over transportation companies such as have herein been described.

It is not, and will not be, questioned but that, if the Constitution has vested such power, it is not within the legislative power, either by its silence or by direct enactment, to modify, curtail, or abridge this constitutional grant. The language of the Constitution in dealing with these very powers places this beyond peradventure when it declares (§ 22, art. 12) that "no provision of this Constitution shall be construed as a limitation upon the authority of the legislature to confer upon the Railroad Commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the Railroad Commission in this Constitution."

See Pacific Teleph. & Teleg. Co. v. Eshleman, 166 Cal. 640, 653, 50 L.R.A.(N.S.) 652, 137 Pac. 1119, Ann. Cas. 1915C, 822.

We agree with the construction placed by the Commission upon the legislative enactments and with its conclusion that the legislature inadvertently failed or deliberately declined to make a specific grant of power to the Railroad Commission to regulate the affairs of these classes of transportation companies. We need not here repeat the convincing reasoning of the Commission in this behalf, since doubtless its views will find expression in its own official reports, and it is sufficient for the purposes of this determination to express our concurrence in and with them.

We take up, then, the single consideration of the constitutional grant of power. It is found in § 22, art. 12, of the Constitution

as it was amended in 1911. The section creates the Railroad Commission and defines its powers. In so doing it declares: "Said Commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said Commission, than the rates, fares, and charges which are specified in such tariff."

It is not questioned but that the Peninsula Company and the Wichita Transportation Company are public transportation companies, are common carriers, and are public utilities within the definition of § 23, art. 12, of the Constitution. As little will it be questioned but that, if the quoted language of § 22 stood alone as a subject of construction, it would be unhesitatingly held, in the present day, as it is held in construing similar language in other states, that it conferred upon the Railroad Commission regulatory powers over all transportation companies, therein including transportation companies of the classes under consideration. *Exempli gratia,* in Georgia R. & Power Co. v. Jitney Bus Co. the Georgia statute conferred jurisdiction upon the Railroad Commission over "all common carriers,—railroads and express corporations or companies within this state,"—and its Railroad Commission held this to be a grant of power to regulate automobile buses and trucks carrying passengers and property for hire. P.U.R.1915C, 928. Again, the Illinois Public Utilities Commission had, under § 8 of that state's act (Laws 1913, p. 464) been given "general jurisdiction over all public utilities," and a "public utility" was defined to be "every corporation . . . that now or hereafter may own, etc., for public use any plant, equipment, or property used or to be used for or in connection with the transportation of persons." Here, again, the Illinois Public Utilities Commission held this grant to confer upon it jurisdiction over such automobile passenger and freight carriers. Jacksonville R. Co. v. O'Donnell, P.U.R.1915C, 853. Therefore we repeat that one would have no hesitancy in declaring that the language of the Constitution in conferring upon the Railroad

Commission power of regulatory control over "railroads and other transportation companies" embraced within its grant companies of the nature we are considering. And we interrupt our argument here to say that, while the problem is to be resolved solely under the determination of the existence or nonexistence of the power in the Railroad Commission, no reason appears why such power should not have been conferred upon it, and multitudinous reasons exist why it should have been conferred. These automobile stage companies carry passengers to great distances, over many and devious roads. It is a part of common knowledge that one may travel by this method at least from San Diego to Sacramento, and doubtless further,—a distance of over 600 miles. Thousands of passengers are thus carried over mountains and plains. Aside from the mere matter of the regulation of fares, every consideration suggests the desirability, if not the need, of safety regulations touching the care and upkeep of the machines, the skill and prudence of the chauffeurs, etc. And touching the movement of freight, while in many instances these truck companies parallel railroads, in others they enter, unrestricted and uncontrolled, into new territory. Modern transportation has unquestionably reached the point where it is no more an answer to the farmer who thinks that the rates of the auto truck which passes his farm are extortionate, to say that he may haul his own product, than it would be to make him the same answer if he were complaining of a railroad extortion. And, moreover, it is not only a matter of common knowledge, but is presented in these cases, that in many instances these unregulated companies interfere seriously with the revenues of controlled public utilities, a percentage of which revenues goes by way of taxes to the support of the state.

But returning to the fundamental questions: The nonexistence of the power in the Railroad Commission to supervise these corporations is found and declared by the Railroad Commission to rest upon the construction of the phrase "other transportation companies" given to it by this court in Railroad Comrs. v. Market Street R. Co. 132 Cal. 677, 64 Pac. 1065. It is said, and truly, that § 22, art. 12, of the Constitution, amended as it was in October, 1911, and embodying as it does the precise language contained in the section before amendment, will be held to have been

amended and re-enacted in the light of the construction which this court had put upon that language. In 1901, § 22, so far as concerns the quoted language, stood identically as it does to-day. In that year the Railroad Commission made demand upon the Market Street Railway Company of San Francisco to produce its books, records, and papers and submit itself to the regulatory powers of that Commission as defined by the Act of 1880 (Stat. 1880, p. 45). The Market Street Railway Company resisted this demand. The Railroad Commission brought action in the superior court to enforce it. The railway company prevailed, and the Commission appealed, contending that it was given authority by virtue of § 22, art. 12, of the Constitution. Before this court the question for determination was stated to be: "Do the words, 'railroad and other transportation companies,' include a street railway company in a municipality engaged in the business of carrying passengers on street railroad cars?"

This was the sole proposition presented to this court for determination. Mr. Justice Temple, in dissenting, held that from the context the meaning of "other transportation companies" was so plain as to deprive a court of the power to construe it. But the view of the majority of this court was that the words called for construction. So construing them this court held, for reasons not calling for repetition, as they are fully set forth in the opinion, that "other transportation companies" did not embrace within its meaning "street railway companies carrying passengers for hire within the municipal limits." But the decision, upon fundamental and familiar principles, decided nothing more than that this particular character of transportation company was not embraced within the purview of the language of the Constitution. Thus it is said that the language of the Constitution "is inconsistent with the idea that the entire people of the state [through the State Railroad Commission] were interested in the rates for carrying passengers within the corporate limits of a town or municipality;" and it is further declared, arguendo: "Companies engaged in draying, running freight wagons, delivery wagons, delivering parcels, teaming, or running elevators, are engaged in the business of 'transportation;' but it surely could not be contended that they are subject to the jurisdiction of the 'Railroad Commission.' The people of the state would not have

agreed to pay the salaries and expenses of the Railroad Commissioners, selected from different geographical sections of the state, for the purpose of regulating the charges of the 'United Carriage Company' of San Francisco. Yet it is a transportation company."

This language is convincing in establishing the unquestioned fact that this court had in contemplation and was discussing transportation companies of whatsoever kind, operating exclusively within a municipality; and good reason appears for this, because all such transportation companies were subject to license fees and police regulations imposable upon them by the municipal authorities.

All, therefore, that was actually decided in the Market Street Case was that the Market Street Railway and other street railways of its character were not embraced within the meaning of the phrase "other transportation companies" as employed in the Constitution. The most that was inferentially declared in the *obiter* above quoted was that other transportation companies operating wholly within the limits of a municipality were not within the contemplation of the Constitution. Further than this the decision did not go, and further than this it should not be carried. It results, therefore, that the adjudication relied on by the Railroad Commission in no wise determines the question presented. That question is at large. It may be thus put: Did the Constitution in the language quoted exclude, by necessary or even by fair construction, control over transportation companies of the character here presented? Assuredly nothing in the language of the grant excludes them, and no legitimate construction upon the phrase so oft quoted demands their exclusion. It must be, and therefore is held, that the Constitution has granted regulatory powers over such corporations to the Railroad Commission by virtue of § 22, art. 12, of the Constitution, and it follows herefrom that mandate should issue to the Railroad Commission in accordance with the prayers of the petitioners.

It is adjudged accordingly.

We concur: Angellotti, Ch. J.; Shaw, J.; Melvin, J.; Lorigan, J.; Sloss, J.; Lawlor, J.

Modification of Opinion.

Per Curiam:

We think that the opinion already filed in these cases sufficiently and clearly enough indicates the view of this court as to the extent of the jurisdiction of the Railroad Commission as to such transportation companies as those involved in these proceedings. In view of what is said in the opinion, it is manifest that the writ of mandate ordered issued by the judgment is too broad in its terms, and requires the exercise of jurisdiction not conferred by § 22 of article 12 of the Constitution. It was not intended to require the assumption by the Railroad Commission of jurisdiction of any matter not fairly covered by the provisions of that section.

The proceedings before the Railroad Commission involve substantially only matters relating to the rates to be charged by the transportation companies that were defendants therein, and for all practical purposes it is necessary only to grant relief in that particular respect.

It is ordered that the opinion heretofore filed be modified by striking out the words, "in accordance with the prayers of the petitioners," at the end of said opinion, and inserting in lieu thereof the words, "to exercise such powers."

It is ordered that the judgment heretofore given be modified to read as follows: "It is ordered that a peremptory writ of mandate issue to the Railroad Commission requiring the Commission to make its order that the defendants in the proceedings referred to pending before said Commission, *viz.*, the 'Wichita Transportation Company,' and the 'Peninsula Rapid Transit Company,' forthwith file with the Commission their schedules of rates, fares, charges, and classifications, and further that the Commission assume the jurisdiction over these companies which is conferred by § 22, art. 12, of the Constitution."

Note.—In Western Asso. of Short Line Railroads v. Hackett, Sept. 30, 1915, P.U.R.1915F, 997, the California Commission had held that a motor bus line, auto truck line, or auto stage line publicly engaged in transporting freight for hire over regular routes on the public highways, was not a public utility under the Commission Act, and was, therefore, not subject to the jurisdiction of the Commission, although it was a common carrier at common law and

under § 2168 of the Civil Code. A similar conclusion was reached in United Railroads v. Peninsula Rapid Transit Co. P.U.R.1915F, 1012. Both of these cases were overruled in Western Asso. of Short Line Railroads v. Railroad Commission, *supra*. In the Western Asso. case, before the Commission, it was pointed out that decisions of state Railroad or Public Service Commissions upon the question whether they had jurisdiction of jitney busses and motor trucks, were of little aid to a Commission of a sister state in determining such a question, for the statutes conferring jurisdiction were dissimilar. In the Commission case it was admitted that the legislature could have conferred a more extended jurisdiction over these agencies in accordance with the provisions of the Constitution itself.

Note.—Distinction between Franchise and Operating Certificate.

The California statute vests in the Commission the power to grant or withhold a certificate permitting the operation of a motor vehicle, while the right to occupy the streets of a city was formerly granted by municipal franchise. By the amendment of 1919 all powers theretofore vested in local authorities to grant or withhold the right to occupy streets for the purpose of operating a transportation company, were eliminated. There remained and still remains vested in the Railroad Commission the power of granting or withholding a certificate declaring that public convenience and necessity require the operation of such a company. This is an exercise of the power of the state to determine whether the rights and interests of the general public will be advanced by the prosecution of the enterprise which it is proposed to carry on for the service of the public. Many considerations enter into a determination of whether or not such a certificate should be granted, among which is the important question of competition with an established utility which is doing its full duty to the public. Re Western Transport Co. P.U.R.1922C, 12.

CALIFORNIA RAILROAD COMMISSION.

RE RATES, FARES, CHARGES, CLASSIFICATIONS, RULES & REGULATIONS OF TRANSPORTATION COMPANIES.

[Decision No. 4814; Case No. 1110.]

Commissions — Jurisdiction — Automobiles.

1. Under the California statute (Laws 1917, chap. 213), regulating the operation of automobiles, stages, and trucks, exclusive jurisdiction is given to municipalities when such transportation is conducted wholly within the limits of incorporated cities, while the Commission has jurisdiction when such transportation is not confined within such limits.

Franchises — Automobile operation.

2. Under the California statute (Laws 1917, chap. 213) regulating the operation of automobiles, stages, and trucks, permission must first be obtained for the operation of such vehicles between fixed termini or over defined routes, from the local authorities, over whose highways it is proposed to operate except as such operation was being made in good faith on May 1, 1917.

Certificates of convenience and necessity — Automobiles — Transportation companies.

3. Under the California statute (Laws 1917, chap. 213) automobile transportation companies not operated wholly within the limits of an incorporated city must obtain certificates of convenience and necessity from the Commission for operation between termini or over regular routes, except where such operation was being conducted in good faith on May 1, 1917.

Security issues — Automobile transportation companies.

4. Automobile transportation companies must under the California statute (Laws 1917, chap. 213) obtain the consent of the Commission for the issuance of securities payable at a period of more than twelve months, where the aggregate amount of the issuance at any one time exceeds $2,500.

Automobiles — Transportation companies — Jurisdiction of Commission.

5. Jurisdiction was vested in the California Commission under chapter 213 of the Laws of 1917 to fix the rates, fares, charges, classifications, rules, and regulations of automobile transportation companies; to regulate the accounts, service, and safety of operation of such companies; to require the filing of annual and other reports, and to supervise and regulate such companies in "all matters affecting the relationship between such companies and the traveling and the shipping public."

Automobiles — Jurisdiction — Transportation companies.

6. Under the California statute regulating automobile transportation companies (Laws 1917, chap. 213) any order of the Commission in the exercise of its authority supersedes conflicting provisions of any municipal or county ordinance.

Automobiles — Rules and regulations.

7. The California Commission, after a general review of chapter 213 of the Laws of 1917, regulating the operation of automobiles, stages, and trucks, etc., established rules and regulations governing rates, issuance of free transportation, time schedules, and the places and manner of filing bonds, and prescribed general rules governing the safety of operation.

[November 6, 1917.]

INVESTIGATION, on the Commission's own motion, of the rates, classifications, rules, and regulations of transportation compa-

nies as defined in chapter 213, Laws of 1917; rules and regulations established.

By the **Commission:** This is an investigation on the Commission's own motion into the matter of the rates, fares, charges, classification, rules, and regulations of transportation companies as defined in chapter 213, Laws of 1917, which became effective August 27, 1917. This statute embodies a comprehensive state-wide plan for the regulation of the transportation of persons or property by horse-drawn or automobile stages or trucks operating as common carriers. We believe this statute to be of sufficient importance to be set forth here in full:

"Chapter 213.

"An Act Providing for the Supervision and Regulation of the Transportation of Persons and Property for Compensation Over Any Public Highway by Automobiles, Jitney Busses, Autotrucks, Stages and Autostages; Providing for the Issue by Incorporated Cities and Towns, Cities and Counties, and Counties of Permits for the Operation of Such Automobiles, Jitney Busses, Autotrucks, Stages and Autostages; Empowering Incorporated Cities and Towns, Cities and Counties, and Counties to Enact Ordinances for the Supervision and Regulation of Automobiles, Jitney Busses, Autotrucks, Stages and Autostages and Providing Penalties for the Violation of Such Ordinances; Defining Transportation Companies and Providing for the Supervision and Regulation Thereof by the Railroad Commission; Providing for the Enforcement of the Provisions of This Act and for the Punishment of Violations thereof; and Repealing All Acts and Parts of Acts Inconsistent with the Provisions of This Act.

"(Approved May 10, 1917.)

"The people of the state of California do enact as follows:

"Section 1. (*a*) The term 'corporation' when used in this act means a corporation, a company, an association or a joint stock association.

"(*b*) The term 'person' when used in this act means an individual, a firm or a copartnership.

"(*c*) The term, 'transportation company,' when used in this act, means every corporation or person, their lessees, trustees,

receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any automobile, jitney bus, autotruck, stage or autostage used in the transportation of persons or property as a common carrier for compensation over any public highway in this state between fixed termini or over a regular route and not operating exclusively within the limits of an incorporated city or town or of a city and county; *provided,* that the term, 'transportation company,' as used in this act, shall not include corporations or persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever, in so far as they own, control, operate or manage taxicabs, hotel busses or sight-seeing busses, or any other carrier which does not come within the term, 'transportation company,' as herein defined.

"(*d*) The term, 'public highway,' when used in this act, means every public street, road or highway in this state.

"(*e*) The words, 'between fixed termini or over a regular route,' when used in this act, mean the termini or route between or over which any corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, usually, or ordinarily operate any automobile, jitney bus, autotruck, stage or autostage, even though there may be departures from said termini or route, whether such departures be periodic or irregular. Whether or not any automobile, jitney bus, autotruck, stage or autostage is operating 'between fixed termini or over a regular route' within the meaning of this act shall be a question of fact and the finding of the Railroad Commission thereon shall be final and shall not be subject to review.

"Sec. 2. No corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any automobile, jitney bus, autotruck, stage or autostage for the transportation of persons or property for compensation on any public highway in this state except in accordance with the provisions of this act.

"Sec. 3. (*a*) No corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, shall operate any automobile, jitney bus, autotruck, stage or autostage for the transportation of persons or property as a common carrier for compensation on any public highway in this state between any fixed termini between which or over any route over

which such corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, are not actually operating in good faith on May 1, 1917, unless a permit has first been secured as herein provided.

"(*b*) Application for such permit shall be made by such corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, to the legislative or other governing board or body of each incorporated city or town, city and county, and county within or through which applicant intends to operate. Such application shall be in writing, verified by applicant, and shall specify the following matters:

"(1) The name and address of applicant and the names and addresses of its officers, if any.

"(2) The public highway or highways over which and the fixed termini or the regular route, if any, between which or over which applicant intends to operate.

"(3) The kind of transportation, whether passenger or freight or both, in which applicant intends to engage, together with a brief description of each vehicle which applicant intends to use, including the seating capacity thereof if for passenger traffic or the tonnage if for freight traffic.

"(4) A proposed time schedule, if any.

"(5) A schedule or tariff showing the passenger fares or freight rates to be charged between the several points or localities to be served.

"(*c*) Upon the filing of said application, the legislative or other governing board or body with which the same has been filed may in its discretion fix a time and place for a hearing on said application, which time shall not be less than five days subsequent to the filing of said application. No application shall be granted without a hearing. When a time and place for hearing have been fixed the applicant shall, at least three days prior to said hearing, cause to be published in a newspaper of general circulation in the incorporated city or town, city and county, or county within which applicant desires to exercise a permit, a notice reciting the fact of the filing of said application, together with a statement of the time and place of the hearing of said application.

"(*d*) At the time specified in said notice or at such later time

as may be fixed by said legislative or other governing board or body, a public hearing upon said application shall be held by or under the direction of said legislative or other governing board or body. After such hearing, said legislative or other governing board or body may issue the permit as prayed for or refuse to issue the same, or may issue the same with modifications and upon such terms and conditions as in its judgment the public convenience and necessity may require.

"(*e*) Each permit issued under the provisions of this act shall contain the following matters:

"(1) The name of the grantee.

"(2) The public highway or highways over which, and the fixed termini, if any, between which the grantee is permitted to operate.

"(3) The kind of transportation, whether passenger or freight, in which the grantee is permitted to engage, together with a statement of the number and of the maximum seating or tonnage capacity of the vehicles which the grantee is permitted to operate.

"(4) The term for which the permit is granted, which term shall not exceed five years.

"(5) Such additional matters as said legislative or other governing board or body may deem necessary or proper to be inserted in said permit.

"No permit issued under the provisions of this act may be assigned or transferred without the consent of the granting authority.

"(*f*) Each incorporated city or town, city and county, and county shall have the power, by ordinance, to supervise and regulate every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any automobile, jitney bus, autotruck, stage or autostage, used for the transportation of persons or property for compensation over any public highway within their respective territorial limits, and in the exercise of such power may provide for the licensing of all drivers, the filing of indemnity bonds, the enactment of traffic rules and regulations, the regulation of the rates, service and safety of all corporations and persons, their lessees, trustees, receivers or trustees appoint-

ed by any court whatsoever, and all other matters affecting the relationship between such carriers and the traveling and shipping public, with power to prescribe penalties for the violation of such ordinances; *provided,* that the power in this act granted to incorporated cities and towns, cities and counties, and counties shall at all times be subject to and in no instance be construed to impair the jurisdiction of the Railroad Commission of the state of California as conferred by the Constitution of this state or by this act.

"(*g*) Nothing in this act shall be construed as in any way limiting or impairing the power of any incorporated city or town, city and county, or county, to prevent corporations and persons, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged on May 1, 1917, in the transportation of persons or property for compensation over any public highway or highways in this state from thereafter using any public highway or highways within the territorial limits of such incorporated city or town, city and county, or county, unless they shall first have secured from such incorporated city or town, city and county, or county, a franchise or permit for the use of such public highway or highways in accordance with the organic law of such incorporated city or town, city and county, or county.

"Sec. 4. The Railroad Commission of the State of California is hereby vested with power and authority to supervise and regulate every transportation company in this state; to fix the rates, fares, charges, classifications, rules and regulations of each such transportation company; to regulate the accounts, service and safety of operations of each such transportation company; to require the filing of annual and other reports and of other data by such transportation companies; and to supervise and regulate transportation companies in all other matters affecting the relationship between such companies and the traveling and shipping public. The Railroad Commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations applicable to any and all transportation companies. The Railroad Commission, in the exercise of the jurisdiction conferred upon it by the Constitution of this state, and by this act, shall have power and authority to make orders and to prescribe rules and regulations affecting transportation companies, not-

withstanding the provisions of any ordinance or permit of any incorporated city or town, city and county, or county, and in case of conflict between any such order, rule or regulation and any such ordinance or permit, the order, rule or regulation of the Railroad Commission shall in each instance prevail.

"Sec. 5. No transportation company shall hereafter exercise any right or privilege under any franchise or permit hereafter granted by any incorporated city or town, city and county, or county, without having first obtained from the Railroad Commission a certificate declaring that public convenience and necessity require the exercise of such right or privilege, but no such certificate shall be required of any transportation company as to the fixed termini between which or the route over which it is actually operating in good faith on May 1, 1917. A transportation company may apply for a certificate of public convenience and necessity in advance of securing any franchise or permit for the use of the public highways constituting the proposed route. The Railroad Commission shall have power, with or without hearing, to issue said certificate as prayed for, or to refuse to issue the same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

"The Railroad Commission may at any time for a good cause suspend and upon notice to the grantee of any certificate and opportunity to be heard revoke, alter or amend any certificate issued under the provisions of this section.

"Sec. 6. No transportation company may issue any stock or stock certificate, or any bond, or any note or other evidence of indebtedness payable at a period of more than twelve months after the date thereof in such an amount that the aggregate amount of notes or other evidences of indebtedness at any one time outstanding shall exceed the amount of $2,500, unless such transportation company, in addition to the other requirements of law, shall first have secured from the Railroad Commission an order authorizing such issue and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the Railroad Commission, the money, property or labor to be procured

or paid for by such issue is reasonably required for the purpose or purposes specified in the order and that, except as otherwise permitted in the order in the case of bonds, notes and other evidences of indebtedness, such purpose or purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. Such order may be made, in the discretion of the Railroad Commission, either with or without a public hearing. Except as in this section otherwise provided, the provisions of § 52 of the Public Utilities Act, referring to the purposes for which stocks and stock certificates, bonds, notes and other evidences of indebtedness, may be issued and the application of and the accounting for the proceeds thereof, the powers and duties of the Railroad Commission and the rights and duties of public utilities with reference thereto, the legal status of stocks and stock certificates and of bonds, notes and other evidences of indebtedness, issued without an order of the Railroad Commission then in effect, and the relationship of the state of California to such stocks and stock certificates, and such bonds, notes and other evidences of indebtedness, shall apply to and govern the issue of stocks and stock certificates, and of bonds, notes and other evidences of indebtedness, of transportation companies with the same force and effect as though § 52 of the Public Utilities Act were restated in this section, with the substitution of the words, 'transportation company,' for the words, 'public utility,' and of the words, 'transportation companies,' for the words, 'public utilities.' The provisions of § 57 of the Public Utilities Act, referring to fees to be charged and collected by the Railroad Commission for certificates authorizing the issue of bonds, notes or other evidences of indebtedness of public utilities shall apply to and govern authorizations by the Railroad Commission of the issue by transportation companies of bonds, notes or other evidences of indebtedness.

"Sec. 7. In all respects in which the Railroad Commission has power and authority under the Constitution of this state or this act, applications and complaints may be made and filed with the Railroad Commission, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review or mandate filed with the supreme court of this state, considered and

disposed of by said court, in the manner, under the conditions and subject to the limitations and with the effect specified in the public utilities act.

"Sec. 8. Every officer, agent or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the Railroad Commission, or who procures, aids or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation, or any part or provision thereof, is guilty of a misdemeanor and is punishable by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

"Sec. 9. Neither this act nor any provision thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this Union, except in so far as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

"Sec. 10. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

"Sec. 11. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. The provisions of an act entitled 'An Act Providing for the Sale of Street Railroad and Other Franchises in Counties and Municipalities and Providing Conditions for the Granting of Such Franchises by Legislative or Other Governing Bodies, and Repealing Conflicting Acts (Approved March 22, 1905, Stat. 1905, p. 777),' are declared not to apply to the use of highways for the kind of transportation herein regulated."

[1] We believe it is unnecessary to discuss all the provisions of this statute. There are certain provisions, however, to which

we desire to draw attention. In the first place, the statute draws a distinct line between the power of incorporated cities and the power of the Railroad Commission with reference to the regulation of transportation by stages and trucks. When such transportation is conducted wholly within the limits of an incorporated city, the municipality has exclusive jurisdiction with reference to the regulation thereof. When, however, such transportation is not confined within the limits of an incorporated city, regulation of such transportation is vested in the Railroad Commission. This line of demarcation between the powers of incorporated cities and the powers of the Railroad Commission was made in accordance with that indicated and approved by the supreme court in Western Asso. v. Railroad Commission, 173 Cal. 802, L.R.A.—, —, P.U.R.1917C, 178, 162 Pac. 391.

(*a*) *Local Permits Must be Obtained.*

[2] The statute provides in § 3 that no corporation or person "shall operate any automobile, jitney bus, autotruck, stage or autostage for the transportation of persons or property as a common carrier for compensation on any public highway in this state between any fixed termini between which or over any route over which" such transportation is not actually being carried on by said corporation or person "in good faith on May 1, 1917, *unless a permit has first been secured as herein provided,*" from the local authorities over whose highways it is proposed to operate. In other words, a permit must be obtained from the local authorities before anyone can engage in such transportation business as a common carrier between fixed termini or over defined routes, except as such operation was being made in good faith on May 1, 1917. The statute then sets out in detail the manner in which an application for permit shall be made to the municipality or county authorities, and the manner in which the same shall be granted. The statute further contains an affirmative grant to municipalities and counties of the power to supervise and regulate such transportation within their limits and to grant or refuse permits.

(*b*) *Certificates of Public Convenience and Necessity.*

[3] Stage or truck transportation conducted wholly within the limits of an incorporated city does not require a certificate of

public convenience and necessity from the Railroad Commission. A certificate of public convenience and necessity must, however, be obtained in certain cases in which such transportation is conducted otherwise than wholly within the limits of an incorporated city. Section 5 of the act requires such a certificate to be obtained from every "transportation company" except as to the operations of such company between fixed termini or over regular routes which were being conducted in good faith on May 1, 1917.

The term, "transportation company," is specifically defined in § 1 (*c*) of the statute. The jurisdiction of the Railroad Commission is confined to transportation companies as thus defined, and when the term, "transportation company," is used in the opinion and order herein, it must be understood that the term is used according to the definition in § 1 (*c*) in the statute. We desire to point out also that the statute gives to the Railroad Commission in § 1 (*e*) the final determination of whether a transportation company, any automobile, jitney bus, autotruck, stage or autostage is operating "between fixed termini or over a regular route," so as to make the same a transportation company under the jurisdiction of the Railroad Commission.

(*c*) *Issue of Securities.*

[4] Section 6 of the statute requires that the consent of the Railroad Commission be obtained before any transportation company may issue any stock or stock certificate or any bond, or any note or other evidence of indebtedness payable at a period of more than twelve months after the date thereof in such an amount that the aggregate amount of notes or other evidences of indebtedness at any one time outstanding, shall exceed the amount of $2,500.

(*d*) *Power of Railroad Commission with Reference to Transportation Companies.*

[5] The Railroad Commission is vested with power and authority to fix the rates, fares, charges, classifications, rules, and regulations of such companies; to regulate the accounts, service, and safety of operation of such companies; to require the filing of annual and other reports, and to supervise and regulate such companies in "all other matters affecting the relationship be-

tween such companies and the traveling and the shipping public."

(e) *Railroad Commission Regulations Supersede Local Regulations.*

[6] The statute specifically provides in § 4 that the exercise by the Railroad Commission of the jurisdiction conferred upon it under the Constitution or statutes of this state shall supersede any conflicting exercise of municipal or county jurisdiction. In other words, any order, rule, or regulation made by the Railroad Commission in the exercise of the authority conferred upon it shall supersede the conflicting provisions of any municipal or county ordinance.

Furthermore, the Railroad Commission is given specific authority to prescribe rules and regulations with reference to transportation companies, either "by general order or otherwise."

We believe it unnecessary to refer to the other provisions of the statute, which relate more particularly to the procedure to be followed by the Railroad Commission and the courts in carrying out the powers of regulation provided in the statute.

Notice and Hearings.

Two public hearings were held in this proceeding, one in Los Angeles on July 25, 1917, and the other in San Francisco on August 8, 1917. A copy of the order instituting this investigation and a notice of the hearings were served by the Railroad Commission on every transportation company so far as known. In addition, very widespread publicity of the hearings was given in the public press. As a result the hearings were very largely attended by representatives of counties, municipalities, and other public organizations, transportation companies, and representatives of the railroads. These hearings revealed a universal spirit of co-operation by all interested parties in the matter of the successful regulation of transportation companies under the statute, and the Railroad Commission received many helpful suggestions from those present at the hearings.

Purpose of proceeding.

The purpose of the present proceeding is to make a complete investigation into the operation of transportation companies, and

to formulate such a set of rules and regulations governing these transportation companies as to the Railroad Commission may seem reasonable.

The business of transportation by stage and trucks, while having its origin in California, is still in its early development. We believe that such transportation has come to stay, and that properly developed it will become a very necessary public convenience. In working out, therefore, the matter of the regulation of these transportation companies, we hope for a continuance of the co-operative spirit which has been heretofore displayed. In preparing the rules and regulations governing the operations of these transportation companies, we have had in mind the convenience and safety of the public, and also the convenience of the transportation companies themselves. We believe that we have formulated a set of rules and regulations which provide the greatest amount of convenience and safety to the public, combined with the minimum of burden on the transportation companies. Of course, the future may reveal that certain of these rules and regulations will have to be modified or changed, and the Commission will be glad to entertain applications therefor as occasion arises.

We have also formulated certain rules and regulations governing the matter of rates and the selling of tickets. Concurrently with the order in this proceeding, the Railroad Commission is issuing in the form of a general order No. 51 a tariff circular prescribing the rules and regulations under which the transportation companies shall file their tariffs with the Railroad Commission. There must, of course, be uniformity in the filing of tariffs, and every transportation company will be directed to file its tariffs in accordance with such circular.

Rates and Time Schedules.

[7] The Railroad Commission, on January 18, 1917, issued its general order No. 47, calling upon automobile passenger and freight carriers to file with the Railroad Commission their schedules of rates, fares, charges, classifications, and time schedules. This general order was issued prior to the passage of chapter 213, Statutes of 1917. The term, "transportation company," as defined in said statute, is broader than automobile passenger and

freight carriers to which general order No. 47 applies. The Railroad Commission will accordingly issue an order in this proceeding requiring all transportation companies to file the same in accordance with the provisions of the tariff circular to be issued concurrently herewith as general order No. 51.

All transportation companies will be directed to strictly adhere to the rates, fares, charges, and classifications on file with the Railroad Commission. No change in any rate can be made without the authority of the Railroad Commission having been first obtained, as provided in rules 10 and 11 of the tariff circular this day being issued.

The question of when and under what circumstances a transportation company may furnish free or reduced rate transportation was brought up at the hearings in this proceeding. We do not believe that it is necessary to authorize free or reduced rate transportation in all the instances named in § 17 of the Public Utilities Act as applicable to railroad corporations. We favor the issuance of free or reduced rate service of all public utilities in as few instances as possible. We believe it is sufficient with reference to transportation companies to confine the issuance of free or reduced rate transportation to the officers, agents, and employees of transportation companies, and to the members of their families, and for charitable and patriotic purposes. It should be clearly understood that the authority herein given is merely permissive, and that transportation companies need not issue such transportation unless they desire to do so. In the event that other instances arise warranting the issuance of free or reduced rate transportation, the Railroad Commission may, at that time, be requested to make the necessary authorizations.

The Railroad Commission will require the filing with it of time schedules, and the posting of the same at each station where tickets are sold, and that a copy thereof be in the possession of each driver. Furthermore, the Railroad Commission must be advised in advance of changes in time schedules, as provided in the order herein.

Tickets.

Considerable abuse was shown to exist in the matter of selling

and honoring tickets. In some instances, individuals have made a practice of collecting a group of prospective passengers and then turning them over to whatever transportation company will pay them the greatest compensation as "commission." Also, competing transportation companies have been reported to honor the tickets of competitors, and, after delivering the passenger at his destination, to sell the competitor's ticket for what it will bring. These are merely illustrations of the possibilities which exist with reference to such abuses. The consensus of opinion among the representatives of the transportation companies represented at the hearings was in favor of definite regulation with reference to the selling and honoring of tickets which will eliminate the possibility of these and other abuses.

Bonds and Indemnity Agreements.

The matter of filing bonds or indemnity agreements by transportation companies to cover damage and injuries resulting from negligence, defects in equipment, and accidents of transportation companies, is very important. Several cities and counties now have, by ordinance, provided for the filing of such bonds or indemnity agreements. The practice has been frequently followed of having the original bond or agreement filed with the principal municipality through which the transportation company operates, duplicates of such bond or agreement being filed in the other cities and counties. This question, however, presents certain difficulties. The requirements of the different cities and counties as to the amount and conditions of such bonds and agreements are not at present uniform. The transportation companies accordingly asked the Railroad Commission to make a regulation requiring the filing with the Railroad Commission of the necessary bond or indemnity agreement, and have the same apply wherever the company operates. We believe that the amounts, terms, and conditions and regulations for the filing of bonds and indemnity agreements should be made uniform. It appears to us, however, that this uniformity is not best attained by having bonds and indemnity agreements filed with the Railroad Commission. The character and responsibility of the sureties who go upon these bonds or agreements can best be determined in the locality in which they are made; and, if it becomes necessary to

inspect or sue upon the bond or agreement, the same should be available in the locality to which they apply. For these reasons, among others, it would be impracticable to have all these bonds and agreements filed with the Railroad Commission.

We accordingly recommend to every city and county the adoption of a uniform regulation with reference to this matter. The form of bond or indemnity agreement most generally in effect at present is required to be made in the sum of $10,000 upon each vehicle in operation (giving its manufacturer's number and the state license number), and conditioned that the transportation company will pay all loss or damage which may result to any person or property from the negligent operation or defective construction of said vehicle, or which may arise or result from any violation of any of the provisions of the laws of this state or local ordinances. The recovery upon said bond is limited to $5,000 for the injury or death of one person, $10,000 for the injury or death of two or more persons in the same accident, and $1,000 for the injury or destruction of property. We believe that this is a reasonable bond to require; and we urge upon every city and county to put into effect a regulation requiring the sort of bond above outlined. Furthermore, we believe that the regulation should provide that a bond or agreement may either be provided separately for each vehicle, or one aggregate bond or agreement covering the entire business of the company; and that the original bond or agreement be filed with the municipality or county authorities at either terminus of the transportation company's route, and that a duplicate thereof may be filed in each of the other municipalities and counties through which the transportation company operates.

A copy of this order will be sent to each city and county authority, in order that they may be advised as to the recommendations of the Commission with reference to the establishment of a uniform practice with reference to this matter.

Safety Rules and Operating Regulations.

The order herein will provide sixteen safety rules and operating regulations for transportation companies. We do not believe it necessary to discuss these rules and regulations, as we believe their purpose is, in each instance, obvious. These rules

cover all the matters which at this time seem to the Commission to require the Commission's regulation. Such alterations or conditions as future developments may show to be needed may, of course, hereafter be made.

ORDER.

This proceeding having been regularly instituted on the Railroad Commission's own motion, and hearings having been had, at which all interested parties were given an opportunity to appear and present evidence, and the Railroad Commission being duly advised in the premises.

It is hereby ordered as follows:

1. *Rates.*

Each transportation company shall, within sixty days from the date of this order, file with the Railroad Commission, in accordance with the provisions of the tariff circular being issued concurrently herewith, general order No. 51, schedules of its rates, fares, charges, and classifications charged and collected by it in its service as a common carrier. Every transportation company to which general order No. 47 does not apply, shall file the rates, fares, charges, and classifications in effect on August 27, 1917, when chapter 213, Statutes 1917, became effective, or such rates, fares, charges, and classifications as have since been lawfully filed with the Railroad Commission.

No such transportation company shall charge, demand, collect, or receive a greater or less or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares, and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such transportation company refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, except upon an order or permission from the Commission, nor extend to any corporation or person any privilege or facility in the transportation of passengers or property except such as are regularly and uniformly extended to all corporations and persons.

No transportation company shall, directly or indirectly, issue, give, or tender any free ticket, free pass, or free or reduced rate

transportation except to its officers, agents, employees, and members of their families, or for charitable or patriotic purposes.

2. *Time Schedules.*

Every transportation company shall, within thirty days from the date of this order, file with the Railroad Commission two copies of a working-time schedule. Such schedules shall be typewritten or printed on good paper at least 8½ by 11 inches in size. Such schedule shall show the name of the operating company, the date and hour effective, the time of arrival and departure from and at all termini, and time of departure from all intermediate points between termini; also distance between all stops scheduled to be made either regularly or on application by intending passengers. A copy of time schedule shall be posted at each terminus and at all intermediate stations where tickets are sold, and a copy of such schedule shall be in the possession of each operator or driver of any vehicle used in the transportation of passengers. Time schedules as filed with this Commission and posted for the information of the public must be strictly adhered to in the operation of passenger-carrying vehicles.

Whenever a change is made by a transportation company in the scheduled time of arrival or departure of any regular passenger-carrying vehicle, such information shall be posted by such transportation company in a conspicuous place at each terminus, at each intermediate point where an agency is maintained, and filed with this Commission at least five days before the change is to become effective.

Whenever a change in time schedule is to be made by a transportation company which will effect a reduction in the number of passenger vehicles operated over any scheduled route, or which will effect a reduction in the amount of passenger vehicle service rendered at any terminal station or intermediate stop, such transportation company must submit to the Railroad Commission at least thirty days before the change is to become effective an approximate time-schedule outline showing the proposed reduction in service. The approval of the Commission must be received for such reductions in service before such time schedules are filed with the Commission as hereinabove provided.

3. *Tickets.*

No transportation company may accept for passage via its line any ticket other than its own issue, except it be a coupon of a through joint ticket reading via its line issued by a connecting carrier, or in case where optional route arrangements are provided for under the terms of joint tariffs on file with the Commission and in which tariffs the line honoring is shown as a participating carrier.

No transportation company may, in any manner, pay a commission to any party or person, ticket agent or ticket agency, for the sale of tickets, unless a bona fide contract or agreement has been executed making such party the lawful agent of the transportation company, and copy of such contract or agreement has been filed with and approved by the Commission; party appointed becomes the agent of the transportation company and as such will be held responsible as its agent. If any part of the compensation paid by a transportation company to such agent is used, either directly or indirectly, in such way as to reduce for any person the lawful tariff charges of such transportation company causing or permitting such departure from tariff charges shall be subject to the penalties set forth in § 8, chapter 213, Statutes 1917.

4. *Safety Rules and Operating Regulations.*

Every transportation company shall, within thirty days from the date of this order, put into effect and comply with the following safety rules and operating regulations:

Maintenance.

1. Every motor vehicle shall be maintained in a safe and sanitary condition at all times, and shall be at all times subject to the inspection of the Commission and its duly authorized representatives.

Speedometers.

2. Every motor vehicle shall be equipped with a standard speedometer which shall be maintained in good working order.

Inside Lights.

3. Every motor vehicle used in the transportation of passengers and having a covered top or top up shall maintain a light or lights of not less than two-candle power each within the vehicle

and so arranged as to light up the whole of the interior of the vehicle, and such light or lights shall be kept constantly lighted between the hours of sunset and sunrise at all times when vehicle is occupied by passengers.

Extra Tires.

4. Every motor vehicle used in the transportation of passengers shall when leaving either terminus be equipped with at least one extra serviceable tire.

Brakes.

5. Every motor vehicle shall be equipped with satisfactory brakes, and such brakes shall at all times be maintained in good condition and with a braking power sufficient to lock the rear wheels of said vehicle when brakes are fully applied and vehicle is operated at a speed of 10 miles per hour.

Skid Chains.

6. Every motor vehicle used in the transportation of passengers shall at all times carry a set of skid chains which shall be applied to the rear wheels whenever necessary to prevent skidding.

Warning Device and Fire Protection.

7. Every motor vehicle shall be equipped with a suitable horn or other similar warning device.

Every motor vehicle used for the transportation of passengers shall be equipped with a liquid fire extinguisher of a design or type approved by the Commission, and such extinguisher shall be kept in satisfactory operative condition at all times.

Age and Competency of Drivers of Motors.

8. Drivers of vehicles shall be at least twenty-one years of age, of good moral character, shall be fully competent to operate the vehicles under their charge, and shall hold license from the State Motor Vehicle Department as required by § 24, ¶ (*a*) of the Motor Vehicle Act.

Use of Intoxicating Liquor.

9. No driver or operator of any motor vehicle carrying passengers shall drink any intoxicating liquor during the time he is on duty or at any time use intoxicating liquor to excess.

Use of Tobacco.

10. No driver or operator of any motor vehicle carrying passengers shall smoke any cigar, cigarette, tobacco, or other substance in such vehicle during the time he is driving the vehicle.

11. No transportation company owning, controlling, operating, or managing any motor vehicle used in the transportation of persons or property as a common carrier for compensation shall cause or allow any driver or operator of such motor vehicle to work as driver or operator for more than a maximum of ten hours in any twenty-four hour period.

Obligation to Carry Passengers.

12. No driver or operator of any motor vehicle for passenger transportation shall refuse to carry any person offering himself or herself at any regular stopping place for carriage, and who tenders the regular fare to any regular stopping place on the route of said motor vehicle or between the termini thereof, unless at the time of such offer the seats of said motor vehicle are fully occupied; provided, however, that the driver or operator of such motor vehicle may refuse transportation to any person who is in an intoxicated condition or conducting himself in a boisterous or disorderly manner or is using profane language.

Overcrowding of Vehicles.

13. No motor vehicle used in the transportation of passengers shall be allowed to carry more passengers than the rated carrying capacity as filed with the Commission. Drivers and operators will not be permitted to allow passengers to ride on the running boards, fenders, or any other part of the vehicle than the seats thereof.

No driver or operator of a motor vehicle used for passenger traffic shall permit or allow on the front seat of such motor vehicle more passengers than the seat is designed to carry, exclusive of the driver; or permit or allow any passenger to occupy any other portion of said vehicle forward of the back of the driver's seat.

No passenger shall be allowed to sit on the front seat to the left of the driver if a left-hand drive motor vehicle, or to the right of the driver if a right-hand drive motor vehicle.

No more than one passenger shall occupy the front seat of any motor vehicle with a touring-car body, operated by center control.

Trailers.

14. Except when specially authorized by the Railroad Commission, no motor vehicle used in the transportation of passengers shall be operated or driven with any trailer or other vehicle attached thereto; except in case a vehicle becomes disabled while on a trip and is unable to run from its own power, such disabled car may be towed to the nearest point where repair facilities are available.

Loads on Running Board.

15. No motor vehicle used for the carriage of passengers shall be operated carrying or transporting any luggage, baggage, package, trunk, crate, or other load which shall extend more than 8 inches beyond the running board of said motor vehicle.

Jurisdiction Over Regulations.

16. These rules and regulations shall prevail over and supersede every county or municipal rule or regulation in conflict therewith, but shall not be construed to prevail over or supersede any other rule or regulation lawfully in effect.

Every transportation company should procure and acquaint itself with the provisions of the State Motor Vehicle Act concerning lights as appearing in § (13) ¶¶ "a," "c," and "d." Also with the provisions covering rules of the road and method of operation as contained in § 20, ¶¶ "a," "b," "c," "d," "e," "f," "g," "h," "i," "j," "k," "l," and "p." Also with the provisions covering speed of vehicles as contained in § 22, ¶¶ "a" and "b."

The Railroad Commission hereby finds as a fact that all of the rules and regulations prescribed in the foregoing order are just and reasonable.

CALIFORNIA RAILROAD COMMISSION.

RE NERI T. HOXIE.

[Decision No. 6901, Application No. 4961.]

Monopoly and competition — Competing auto stage lines — Mail contracts.

The possession of a United States mail carrying contract, impos-

ing the necessity for compliance with a specified time of departure, is not an indication that public convenience and necessity require the operation of a stage line as a common carrier under the jurisdiction of the California Commission, especially where the existing facilities are adequate.

[December 5, 1919.]

APPLICATION for a certificate declaring that the public convenience and necessity require a passenger and baggage automobile stage and transportation line between Oceanside and Los Angeles via Coast Highway and Boulevard, and a permit to maintain and operate the same; denied.

Appearances: Malcolm and Turrentine, for applicant; Harry T. Hennessy, for United States Railroad Administration, Southern Pacific Railroad, protestant; T. Morgan, for United Stages, protestant; M. W. Reed, for the Atchison, Topeka & Santa Fe Railroad, protestant; E. S. Good, for A. R. G. Bus Company, protestant; A. L. Hayes, for Pickwick Stages, Incorporated, protestant; W. H. Powell, for White Bus Line, protestant.

By the **Commission**: Neri T. Hoxie has petitioned the Railroad Commission for an order declaring that public convenience and necessity require the operation by him of an automobile stage line as a common carrier of passengers and baggage between Los Angeles and Oceanside.

Public hearings were conducted by Examiner Handford at Los Angeles on October 13 and November 19, 1919, the matter was duly submitted, and is now ready for decision.

Applicant proposes to charge rates in accordance with a schedule marked Exhibit "A" and attached to the application in this proceeding, and to operate on a schedule of one round trip daily serving the terminal points of Los Angeles and Oceanside, no intermediate or local business to be handled.

Applicant is now engaged in the business of operating a stage line between Oceanside and Escondido, and alleges that through service is necessary for the public for the reason that passengers destined Los Angeles have difficulty in procuring transportation between Oceanside and Los Angeles, and that the stages operating between San Diego and Los Angeles do not stop at Oceanside for local passengers unless seating capacity is available at the time of passage through Oceanside.

The inland route of the Pickwick Stages, Incorporated passes through Oceanside, but applicant claims the proposed route would be 30 miles less than that of the present inland route of the Pickwick Stages.

Witnesses for applicant residing at Escondido and Oceanside testified as to inquiries which were made by prospective passengers desiring transportation by stage from Oceanside and Escondido to Los Angeles, although no testimony was introduced indicating that parties desiring to reach Los Angeles were not able to do so either by stage or by the trains of the Atchison, Topeka & Santa Fe Railroad.

This application is protested by the Atchison, Topeka & Santa Fe Railroad, the A. R. G. Bus Company, the Pickwick Stages, Incorporated, and the United Stages. The Atchison, Topeka & Santa Fe Railroad operates a service of 4 round trips per day between Los Angeles and San Diego, serving the station of Oceanside at the same one way fare as proposed by applicant. This protestant claims to have adequate facilities to satisfactorily meet the demands of the public for transportation between these points and at a rate which is considered reasonable.

The A. R. G. Bus Company protest the granting of this application and operate a schedule of 6 round trips per day between Los Angeles and San Diego serving Oceanside as an intermediate point. An average of 19 cars each way per day are required to fill this schedule and such cars are being operated with an average of about 7 empty seats daily. The Pickwick Stages, Incorporated, and the United Stages operate a schedule of 4 round trips daily between Los Angeles and San Diego serving Oceanside as an intermediate point. These protestants filed as an exhibit at the hearing statements showing the passenger traffic for the months of September and October, 1919, and for the period November 1st to November 13th, inclusive.

These statements show the following data:

	Cars operated.	Available seats.	Passengers hauled.	Empty seats.	Average passengers per car.	Percentage seating capacity vacant.
September, 1919	530	4,240	3,378	872	6.37	20.57
October, 1919 ..	476	3,808	2,988	820	6.27	21.54
November 1 to 13, 1919, inclusive	185	1,480	1,065	425	5.75	39.91

The Pickwick Stages, Incorporated, also operate a service of one round trip daily via the inland route, Escondido being an intermediate point on such route. The contention of all stage companies appearing as protestants against the granting of this application is that their facilities are ample to care for all the traffic offering between Oceanside and Los Angeles and desiring stage transportation, whether such traffic originates at Oceanside or is that originating at, or destined to, Escondido via the line between Escondido and Oceanside at present operated by applicant.

The time schedule of the applicant proposes a departure from Los Angeles at 8 A. M. daily and at such time the stages of the A. R. G. Bus Company, United Stages and Pickwick Stages, Incorporated, are also scheduled to leave Los Angeles, such companies furnishing all cars that may be necessary to care for travel by stage originating at Los Angeles. The Santa Fe Railroad schedules a train leaving Los Angeles at 9.05 A. M. arriving at Oceanside at 11.35 A. M., or ten minutes prior to the arrival of the proposed stage of applicant. Leaving Oceanside applicant proposes a departure at 3.15 P. M. This departure is too late to make connection with the stage lines at present operating which are scheduled to leave Oceanside at 2.25 P. M. The Santa Fe Railroad schedules a train leaving Oceanside at 2.35 P. M. Upon inquiry as to why applicant could not adjust his present schedule leaving Escondido so as to afford a connection at Oceanside with the train of the Santa Fe Railroad or the stage lines of protestants, it appears that the applicant is operating in connection with his stage service a United States mail route which requires a departure from Escondido for Oceanside at 2 P. M.

The possession of a United States mail contract and the necessity for compliance with a time of departure, as imposed by such contract, is not an indication that public convenience and necessity require the operation of a stage line as a common carrier under the jurisdiction of this Commission in conformity with the statutory law. The stage lines, protestants in this proceeding, claim to have adequate facilities for the transportation of all passengers desiring to use stage line service between Los Angeles and Oceanside, and applicant herein does not desire other than the through business between such points.

After careful consideration of all the evidence in this proceeding, we are of the opinion that the existing transportation facilities, as provided by the Santa Fe Railroad, United Stages, Pickwick Stages, Incorporated, and A. R. G. Bus Company, are adequate to satisfactorily meet the demands of the public desiring transportation between Oceanside and Los Angeles, and that such transportation facilities are capable of expansion to meet the demands of the public for transportation between these points and that, therefore, this application should be denied.

The Railroad Commission hereby *declares,* that public convenience and necessity do not require the establishment by Neri T. Hoxie of an automobile stage line as a common carrier of passengers and baggage between Los Angeles and Oceanside; and

It is hereby *ordered,* that this application be and the same hereby is denied.

Dated at San Francisco, California, this fifth day of December, 1919.

Note.—In Re Escondido Truck Line, Decision No. 5122, Application No. 3386, Feb. 7, 1918, the California Commission refused to permit an autotruck company to include in its tariff a proviso to the effect that detours might be made in certain instances, especially where such detours were proposed to be made only at the discretion of the drivers, without limit set as to their extent. P.U.R.1918E, 793.

In Re Western Motor Transport Co. P.U.R.1922C, 12, the California Commission held that motor vehicle operative rights under certificates separately granted, could not be lawfully combined for the establishment of a through service without first obtaining from the Commission a certificate of public convenience and necessity authorizing the through service.

CALIFORNIA RAILROAD COMMISSION.

RE SAN JOAQUIN LIGHT & POWER CORPORATION.

[Decision No. 8084, Application No. 5226.]

Certificates of convenience and necessity — Power of Commission — Automobiles — Private road.

1. The California Commission has no jurisdiction to grant or deny

a certificate to operate an auto stage line as a common carrier, in so far as it is proposed to operate such line over privately owned roads.

Certificates of convenience and necessity — Automobiles — Showing necessary.

2. An application for a certificate of convenience and necessity to operate an auto stage line as a common carrier in competition with other service, will be denied in the absence of any evidence that the existing service is inadequate.

[September 13, 1920.]

APPLICATION for certificate of convenience to operate stage route; denied.

Appearances: Murray Bourne, for applicant; E. A. Williams, for Kings River Transportation Company, protestant.

By the **Commission:** The San Joaquin Light & Power Corporation has petitioned the Railroad Commission for an order authorizing it to operate automobiles, auto trucks, and auto stages for the transportation of only its employees or those having business with applicant and the property to be transported of such persons for compensation between Fresno and Maxsons and thence along the general course of the North Fork of Kings river to the proposed camps and locations of said applicant and intermediate points.

A public hearing on this application was conducted before examiner Satterwhite at Fresno on May 14, 1920, the matter was duly submitted and is now ready for decision.

Applicant proposes to charge rates in accordance with a schedule marked exhibit "A," filed with said application, and to operate on a time schedule marked exhibit "B," attached to said application, and using whatever equipment may be necessary.

The Kings River Transportation Company protested the granting of this application. R. C. Starr, a construction engineer, in charge of construction for the applicant, testified in support of the application.

The applicant is now engaged in the construction of the Kings river project, which will consist, when completed, of six hydroelectric generating plants on the North Fork of the Kings river. The definite location of these plants has not yet been determined. The applicant now is engaged only in its road construction and

is transporting only such men and material as are necessary for this work. It was shown that it will require at least ten years or more to complete this project.

[1] The necessary employees of applicant will be procured chiefly from the city of Fresno and thence conveyed to the various proposed construction camps located along the private roads of applicant beyond Maxsons or Trimmer. The jurisdiction of this Commission to grant or deny this application ends at Maxsons, where the public highway terminates. Applicant is now employing about thirty men and is conveying to its construction camp near Maxsons not more than ten men a day and will not carry many over that number for some time.

The roads which the applicant is now constructing beyond Maxsons are its own private roads and applicant indicated emphatically at the hearing that these roads would remain private and that no one would be granted a permit to use them. The Commission may only give consideration to that portion of the proposed line and service within its jurisdiction between Fresno and Maxsons or Trimmer over which the applicant desires a certificate to operate its automobiles and trucks for compensation.

[2] The Kings River Transportation Company, protestant, is operating under a certificate granted by this Commission under Decision No. 6609, between Fresno and San Joaquin Light and Power Corporation's Camp No. 2, which camp is at Maxsons. The protestant showed that ever since August 29, 1919, he had been maintaining a good, sufficient and satisfactory service over the route between Fresno and Maxsons and at all times had been fully equipped and is now fully equipped to carry all the traffic over this established route. Protestant further showed that in the future he will be ready at all times to adequately handle all traffic that is offered by reason of the fact that the Kings river project will necessitate the transportation of an indefinite number of passengers and considerable freight.

The protestant also showed without contradiction that if this application is granted its business would be absolutely destroyed and that it would be compelled to discontinue its service. This Commission has frequently held that an affirmative showing

must be made as to the public convenience and necessity for additional transportation facilities before a competing carrier will be authorized to operate over a route already adequately served. The applicant in this proceeding did not offer any evidence whatever to show that the transportation facilities of the protestant are inadequate or unsatisfactory. The chief reasons advanced by the applicant for the granting of this application were that they could transport their passengers and property more swiftly and economically on account of the control of their private roads over which they would not permit the protesting carrier to travel.

After a careful consideration of the evidence, we are of the opinion that the application should be denied.

The Railroad Commission hereby declares that public convenience and necessity do not require the operation by San Joaquin Light & Power Corporation of automobiles, auto trucks and auto stages for the transportation of only its employees and those having business with applicant and the property to be transported of such persons for compensation between Fresno and Maxsons.

It is hereby *ordered,* that the application be and the same hereby is denied.

CALIFORNIA RAILROAD COMMISSION.

RE CROWN STAGE COMPANY.

[Decision No. 8211; Application No. 4576.]

Return — Operating expenses — Depreciation.

1. An allowance of 50 per cent for the annual depreciation of an auto stage equipment is excessive.

Valuation — Operative rights.

2. The California Commission will not allow, in the rate base of a carrier, any amount for "operative rights" further than the expense of securing the certificate of convenience and necessity.

Return — Automobile stage — Percentage.

3. A return of 29.15 per cent on the investment in an automobile stage equipment is excessive.

[October 6, 1920.]

APPLICATION for an increase in rates; denied.

Appearances: Clyde Bishop, for applicant; W. H. Powell, for Motor Transit Company.

By the **Commission**: A. B. Watson, sole owner and proprietor of Crown Stage Company, has applied to the Railroad Commission for an order authorizing an increase in rates and fares between points served by such line in Los Angeles and Orange counties.

A public hearing on this application was conducted by examiner Handford at Santa Ana, the matter was duly submitted, and is now ready for decision.

Applicant is operating stage lines between Pomona and Long Beach, from Santa Ana to Balboa Beach, from Santa Ana to Long Beach, from Santa Ana to Laguna Beach, from Santa Ana to Orange, Anaheim and intermediate points and from Santa Ana to Los Angeles.

[1–3] At the hearing on this application, applicant withdrew the request for a readjustment of rates between Santa Ana, Orange and intermediate points and also stated that no consideration of a rate readjustment on the so-called valley line from Santa Ana to Los Angeles was contemplated in this application. Applicant bases his request for a readjustment of rates, which readjustment would result in an increase, upon the increased operating costs entering into the conduct of the stage business, and witnesses testified as to increase in various items entering into the cost of operation and there was also filed exhibits setting forth the receipts and expenditures over certain periods. By reference to these exhibits it appears that the value of the equipment used in the stage business by applicant as of March 31, 1920, is $66,024.61. Applicant's exhibit No. 1 filed at the hearing on this proceeding shows receipts derived from operation during the period June 1, 1919, to March 31, 1920, inclusive, total $104,016.82. The expense of operation during the same period shows a total of $94,681.54 or a net return of $9,335.28.

In the operating expenses has been figured depreciation at the rate of 50 per cent per annum and it was testified by Mr. Watson that his experience with his class of cars used on this line justifies a depreciation of 50 per cent in that the cars are of no value for the stage business after two years used. This is an exceptionally high rate of depreciation and would indicate that the particular type of car used on the line under consideration is not economically adapted to the stage business. An analysis of detailed data supporting the item of incidental expense as appearing on the applicant's exhibit hereinabove referred to shows two items which are improperly shown as operating expenses: one shown as the right to operate Rose line, in amount $1,900, the other the right to operate Ogden line, $10,000. These amounts are those paid by Mr. Watson to the proprietors of other lines that he has purchased with the consent of the Railroad Commission and the items are presumed to cover franchise value, good will, going concern value, or other intangibles by whatever term called, there having been no tangible property acquired for such specific items which have been entered as "incidental expense." The statement above referred to furnished as an exhibit covers a period of ten months and, therefore, five-sixths of the above amounts which have been spread over an annual period are properly deductable from the total statement of operating expenses as appearing above. The Commission will not allow in a rate basis of any carrier any amount for so-called operative right, other than the expense actually paid for the securing of a certificate of public convenience and necessity. Deducting the above mentioned amounts, which erroneously appear as operating expenses, the correct statement of operating expenses for the above period is $84,764.89, and the correct net amount derived from operation during the period above mentioned is $19,251.93. After allowing the very liberal depreciation claimed by applicant, the net amount received from operation results in a return of 29.15 per cent on the investment amounting to $66,024.61 and, in the opinion of the Commission, such return is in excess of a reasonable return on the capital invested and justifies an inquiry on the Commission's initiative as to the reasonableness of the present rates of fare as

charged by the applicant. Such inquiry is this day instituted on the Commission's initiative.

The application will be denied.

Note.—In Re Hanchett, P.U.R.1922B, 705, the California Commission held that interest on investment in automobile equipment was not a proper charge to operating expenses. It was further held that an auto company should not be allowed to charge a higher local rate in order to discourage as much as possible the use of the line by the public for short haul unprofitable traffic, and to deflect such traffic to competitors. The Commission also held that the rates of an auto stage company should be on a parity with its competitors not only to certain selected points desired by the company, but to all points.

Fundamentally and in the absence of statutory restriction, the right to operate as an auto bus line is measured by the extent of the undertaking, and a company which has undertaken to transport traffic between terminals cannot be said to have undertaken the duty to serve all local points along the route. Watson v. White Bus Line (Cal.) P.U.R.1922A, 620.

The California Commission will not permit automobile transportation companies to lease equipment or to employ drivers or operators on the basis of compensation dependent on the gross receipts per trip or for any period of time. Re Plaza Stages, P.U.R.1919E, 243.

In Re Transportation Companies, P.U.R.1918E, 782, the California Commission held that the practice of automobile transportation companies of leasing equipment or employing drivers or operating cars on a percentage basis of compensation dependent on the gross receipts per trip was unreasonable and that such companies should either own their equipment or lease it for a specified amount on a trip or term basis, the leasing not to include the services of a driver or operator, and such services to be made on the basis of a contract by which the driver or operator became an employee of the transportation company.

Motor carriers operating prior to May 1, 1917 in the state of California, are subject to the regulatory powers of the Commission and must file their operating schedules and tariffs, although they are not required to obtain a certificate of convenience and necessity. Re Maley & Sullivan (Cal.) P.U.R.1922C, 19.

CALIFORNIA RAILROAD COMMISSION.

RE L. A. JONES et al.

[Decision No. 8924, Application No. 6582.]

Certificates of convenience and necessity — Violation of orders — Stage line.

1. A certificate to operate an automobile stage line was denied when it was shown that the applicant had been operating in violation of the law and had continued to do so after the Commission ordered the discontinuance of such service.

Automobiles — Power of Commission.

2. The law governing the operation of automobile stage lines does not give a person without a certificate of convenience any more right to transport truck loads than it does to transport smaller quantities.

[May 3, 1921.]

APPLICATION for authority to operate a freight truck service; denied.

Appearances: McNabb and Hodge, for applicants; H. W. Kidd, for Boutell and Fuqua, operating as Coachella Valley Transportation Company, for T. R. Rex, for A. V. Curphey, and for Thomas Morgan.

By the **Commission**: L. A. Jones and Robert Kaltenborn apply for authority to operate freight truck service between San Bernardino and Colton and Mecca, and intermediate points.

A public hearing upon the application was held by examiner Westover at San Bernardino.

By leave granted at the hearing, the application was amended by striking out Beaumont and Banning from the list of points proposed to be served. Applicants stated at the hearing that they did not desire to do any local business between San Bernardino and Colton, or to or from Beaumont or Banning, but only to operate through between Colton and San Bernardino on the one hand, and Cabazon, Palm Springs, Indio, Coachella, Thermal and Mecca on the other hand, and that any order entered in the matter might so limit the proposed operation. Thereupon T. R. Rex, operating between Los Angeles, San Bernardino and Colton, refrained from protesting, and no protest was made except on behalf of the Southern Pacific Company and Boutell

& Fuqua, operating under the fictitious name of Coachella Valley Transportation Company, hereinafter referred to, for convenience, as the Coachella Company.

The carriers now serving in the territory in question are the Southern Pacific Company, serving by rail all of the points as well as Los Angeles and points east and south of Mecca, and numerous other points in the state of California; the Coachella Company, serving all of the points except San Bernardino by means of its present line between Los Angeles and Mecca via Riverside and also via Colton, with an application to the Commission for authority to extend its operations between Colton and San Bernardino, which application has been heard and is now under submission.

Shippers from San Bernardino, Colton, and Coachella testified concerning service by present carriers. The testimony does not show any complaint against the service of the Southern Pacific Company, except that it does not furnish a pick-up and delivery in connection with its rail service. Their testimony showed complaints against the service of the Coachella Company on account of delays in delivery, loss of or damage to goods, and, in one instance, delay in remitting for c.o.d. collection. It also appeared that these delays were caused by a flooded condition of the road between Thermal and Mecca, which at times required shipment by rail around the flooded area, and that no claims had been made for lost or damaged goods referred to in the direct testimony although drivers had authority to settle such claims upon presentation. These complaints are principally of a character which can be readily obviated or satisfied by the carrier. There was no testimony tending to show that goods had been refused transportation. In this instance, the complaints are not sufficient to show that public convenience and necessity require additional service because of them. The Coachella company operates six trucks and six trailers in its present authorized service and should be able to adequately care for the business.

[1, 2] It appears from the testimony that L. A. Jones, one of the applicants, began operating a truck between San Bernardino, Colton, and Mecca without authority and without knowledge, he claimed, that the law required previous authority for such opera-

tion, but that the Commission advised him of the provision of the law and notified him about December 1, 1920, to quit operating; yet he continued, nevertheless, in defiance of the law and of the Commission's order, until about the time this application was filed on February 21, 1921. He testified, in attempted justification of his operation that after being ordered by the Commission's inspector to quit he had been advised by some other truck man that he had a right to operate and that he supposed he had from the fact that he confined his operation to straight loads. The law does not give any person any more right to transport straight loads or truck loads than it does to transport smaller quantities. The act applies to those "in the business of transportation of persons or property, or as a common carrier, for compensation, over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the limits of an incorporated city or town or of a city and county," excepting only taxicabs, hotel busses or sightseeing busses or other carriers not within the definition. Those interested in the matter will always find it far safer to follow the advice of the Commission, which is engaged in interpreting and applying the law, rather than that of truck drivers or others who may have ulterior motives or interested reasons for giving erroneous advice. Wilful violation of the law is sufficient to show unfitness of such person for operating "transportation companies" or public utilities, although the Commission has in proper instances granted authority where operation had been continued only in good faith without knowledge of the requirement of the law. As the statute in question had been in operation nearly four years, it is but fair to assume that everyone interested in the subject matter has knowledge of its existence, and the maxim, "ignorance of the law excuses no one," should be applied.

COLORADO PUBLIC UTILITIES COMMISSION.

ENOS A. MILLS
v.
ROCKY MOUNTAIN PARK TRANSPORTATION COMPANY.

[Case No. 181, Decision No. 323.]

Automobiles — Jurisdiction of Commission — Competition with railroads.

Under chapter 133, Colorado Sess. Laws, 1915, p. 392, and chapter 134, Colorado Sess Laws, 1915, p. 393, an automobile transportation corporation, in order to come within the jurisdiction of the Public Utilities Commission, as a public utility, or common carrier, must be operating in competition with railroads or street railways, and therefore, a complaint against the service of an automobile company operating between points to which no railroad extends, must be dismissed.

[February 9, 1920.]

COMPLAINT against the service of an automobile transportation company; dismissed for lack of jurisdiction.

Appearances: Lee & Shaw, for complainant; John W. Graham, for defendant.

By the **Commission:** Complainant filed complaint against the defendant on September 19, 1919, alleging, *inter alia,* that complainant is the keeper of, and operates, the Long's Peak Inn, a hotel in Larimer County, Colorado, in the Estes Park region, now designated as the Rocky Mountain National Park, and that his post office address is Long's Peak, Colorado; that defendant is a corporation engaged in the transportation of passengers, freight and express between fixed points over established routes, by means of automobiles, indiscriminately accepting and laying down passengers, freight and express over such routes, and that its post office address is Estes Park, Larimer County, Colorado; that complainant's hotel is about nine miles distant from Estes Park village, and that from May to November in each year, a period of about seven months, it enjoys a large patronage from tourists or visitors to the Estes Park region, and that it is essential that complainant have transportation for his guests and their baggage over the roads affording access to

complainant's hotel; that one such road is from Loveland, Colorado, and the Big Thompson Canon to Estes Park, and thence via the public highway to the hotel of the complainant; that the other such road is via the South St. Vrain creek route from the city of Longmont; that for years past tourists and visitors have enjoyed the privilege of going to complainant's hotel via either of the said routes, and it is desired from the standpoint of the convenience and the pleasure of visitors that they be afforded opportunity to use both of said routes; that in the past visitors usually have gone in by one of the said routes and out by the other in order to enjoy the scenic beauties of the trip to Estes Park, and that a curtailment of this privilege will result in impairing and diminishing complainant's business.

Complainant further alleges that defendant is in the business of carrying passengers and freight in automobiles, for hire, and that it is a common carrier as defined by § 2 (e) of chapter 127, S. L. 1913, as amended, and that defendant operates automobiles into and out of the Estes Park region between Estes Park village and Loveland, and Estes Park village and Longmont, and throughout the Estes Park region, and into and through the Rocky Mountain National Park wherein complainant's hotel is situate.

Complainant also alleges that defendant enjoys a virtual monopoly of the transportation business into, through and out of the Rocky Mountain National Park and contiguous territory, by virtue of a certain contract had with the United States through the secretary of the Department of the Interior, and that for this reason complainant is obliged to rely and depend upon defendant for service in transporting visitors to and from his hotel in said Park; that for several years past the defendant has operated a stage service leaving Estes Park post office in the morning to Long's Peak post office, which last-named post office is at complainant's hotel; that at the beginning of the season of 1919 defendant discontinued morning stage service and refuses to reinstate such service, which is greatly to the detriment and inconvenience of the patrons of complainant's hotel and of such hotel business. Complainant alleges on information and belief that such morning stage service has been remunerative to de-

fendant in the past and that it could be operated without loss as it had in the past been operated by defendant.

The fifth paragraph of complaint alleges that prior to about August 1, 1919, defendant had sold tickets to Estes Park from Longmont by the way of the South St. Vrain route, which passed by complainant's hotel and returned by the same route, and that on or about August 1, 1919, defendant refused and continues to refuse to sell such tickets, and has since that date conveyed only such passengers as requested it by way of the South St. Vrain route to Longmont, but refuses to carry their baggage, which compels passengers desiring to go out via the South St. Vrain route to Longmont to have their baggage hauled from complainant's inn to Estes Park and thence out via Thompson Canon route to Loveland at a cost of $2.50 per hundredweight; that the baggage rate from Estes Park to the railroad is $1.50 per hundredweight, and prior to the inauguration by defendant, about August 1, 1919, of the foregoing practice passengers could have baggage hauled to the railroad at Longmont via South St. Vrain road at $1.50 per hundredweight, which rate is the same as then and now charged for baggage hauled over the Thompson Canon road; that defendant has ample facilities for the transportation of passengers and their baggage from complainant's hotel to Longmont over the South St. Vrain road and would incur no expense for equipment in addition to that now owned and used by defendant in operating its stage line aforesaid.

Complainant also states that prior to making complaint he made demand upon the defendant for the resumption of service from Estes Park village to said Long's Peak Inn and for the carriage of baggage at the regular rate of $1.50 per hundredweight, over said St. Vrain road which demands were refused, and that the discontinuance of such morning service by the defendant from Estes Park to complainant's hotel and the refusal to carry baggage over said South St. Vrain road to or from Longmont, is wholly arbitrary and done with intent to discriminate against complainant and to require guests of complainant to pay an unreasonable and discriminatory charge for transportation of their baggage, and to compel prospective guests of the complainant's inn coming from Estes Park village to pay an exorbitant, arbitrary and unreasonable charge for special trans-

portation service between such points. Complainant further alleges that the foregoing practices of the defendant are against and contrary to the provisions of § 13 (a) and (b), § 18 and § 23 (a) of the act, and that such practices are unfair, unjust and discriminatory as against complainant within the meaning of the Public Utilities Act.

Complainant prays that a hearing be had on the allegations of his complaint and that the practices of the defendant complained of be declared unfair, unjust, and discriminatory; that defendant be required by this Commission to resume the morning service between Estes Park and Long's Peak Inn, and that it be required to transport passengers and their baggage to and from complainant's hotel and Longmont at reasonable rates to be fixed by the Commission.

On October 10, 1919, defendant filed motion to dismiss the cause on the ground that this Commission has no jurisdiction whatsoever over the defendant, and in support of said motion it relies upon the records, files, and proceedings in the cause, and the conclusions heretofore reached by the Commission in relation to the defendant and to the conduct of its business. Defendant also filed its verified answer contemporaneously with the filing of the foregoing motion.

The cause was set down for oral argument upon the motion of the defendant to dismiss the cause, and argument was heard by the Commission at its hearing room, Capitol Building, Denver, on November 6, 1919.

Upon the oral argument defendant's counsel relied upon the opinion of the Attorney General of Colorado given the Commission October 25, 1915, in response to an inquiry as to whether or not the Commission had jurisdiction over automobile companies carrying passengers or freight to points within the state to which no railroad extends, under the provisions of § 2 (e) of the act, as amended, chapter 134 S. L. 1915, and also upon the informal opinion given by the Commission February 2, 1918, in answer to a letter of inquiry from the defendant dated January 31, 1918. The opinion of the Commission was to the effect that the defendant was not in competition with a common carrier as such competition is defined in the act, and that therefore the Commission had no jurisdiction over the acts or busi-

ness of the defendant, which opinion was founded upon the formal opinion theretofore and in 1915 given the Commission by the Attorney General of the state of Colorado.

The issue to be decided in this cause is one of law raised by the pleadings, which is: "Under the allegations of complainant's complaint (which for the purposes of this motion are deemed to be true) is the defendant a "common carrier" under the provisions of the Public Utilities Act as amended by chapter 134 S. L. 1915, and is the defendant a public utility within the meaning of chapter 133 S. L. 1915?"

It was the contention of the defendant at the oral argument that it was neither a "common carrier" nor a "public utility" within the meaning of the above laws, and by the opinion of the Attorney General above referred to, that contention is sustained. (See report Attorney General, 1915–1916, pp. 55–58.)

On the other hand, counsel for complainant vigorously contended that defendant's business is such that the Commission has jurisdiction over it through the operation of the Public Utilities Act, and that it is a "common carrier" within the meaning of § 2 (e) as amended by chapter 134 S. L. 1915. The Acts of 1915 above referred to read as follows:

"Chapter 133 S. L. 1915, p. 392. . . .

"Section 1. Any person, firm, association of persons or corporation, now or hereafter engaged in transportating passengers, freight or express for hire in this state in any automobile or other vehicle whatever, and operating for the purpose of affording a means of transportation similar to that afforded by railroads or street railways, and in competition therewith by indiscriminately accepting, discharging and laying down either passengers, freight or express, between fixed points or over established routes is hereby declared to be affected with a public interest, and to be a public utility, and subject to the laws of this state now in force and effect or that may hereafter be enacted pertaining to public utilities."

"Chapter 134 S. L. 1915, p. 393. . . .

"Section 1. That subdivision 'e' of § 2 of an Act entitled 'An act concerning public utilities, creating a public utilities Commission, prescribing its powers and duties and repealing

certain acts and parts of acts in conflict therewith' be and the same is hereby amended to read as follows:

"2-(e). The term 'common carrier,' when used in this act, includes every railroad corporation; street railroad corporation; express corporation, dispatch, sleeping car, dining car, drawing room car, freight, freight line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading; and every other corporation or person affording a means of transportation, by automobile or other vehicle whatever, similar to that ordinarily afforded by railroads or street railways, and in competition therewith, by indiscriminately accepting, discharging and laying down either passengers, freight or express between fixed points or over established routes; and every other car corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, operating for compensation within this state."

Chapter 134 was approved April 9, 1915, and chapter 133 three days later, on April 12, 1915, and as they relate to the same general subject both acts should be construed together in arriving at the legislative intent.

The phrase "in competition therewith" found in both the above acts is responsible for the issue of law in this cause, for without it in the act no trouble would be encountered in construing the act. The original Act of 1913, commonly called the "Public Utilities Act," did not contain this phrase, nor, indeed, any reference to automobiles *eo nomine*. The general assembly at its twentieth session in 1915 saw fit to legislate upon the subject as expressed in the above enactments.

Mr. Graham for the defendant contends that the Commission has no jurisdiction over automobiles or other means of transportation of passengers or freight, even though conducted over established routes or between fixed points, unless such points or routes are served by railroad or street car competition directly as the word "competition" is generally defined and understood; and as it is admitted that there is no line of railroad or street railway into Estes Park from either Loveland or Longmont or, as a matter of fact, from any other point at all, the business being conducted by defendant, though affording service similar to that ordinarily afforded by railroads by the indiscriminate acceptance and discharge of passengers, freight and express be-

tween those points, is not in competition with "railroads" or "street railways" for the simple reason that there is no railroad or street railway line into Estes Park to be in competition with; hence defendant is not within the meaning of the act as expressed, and the Commission is without jurisdiction.

Mr. Lee has filed a voluminous and exhaustive brief fortifying his position at the oral argument, that the kind of competition meant by the statute is not that for which another is striving at the same time, but that by the phrase "in competition therewith" is meant the kind of competitor that indiscriminately accepts, discharges and lays down passengers, freight or express between fixed points or over established routes similar to that service as ordinarily furnished and afforded by railroads or street railways. The contention is upheld by complainant's counsel with a degree of perseverance as commendable as is the ingenuity and accomplishment of counsel in the preparation of the brief. But to sustain that theory of interpretation would be to ignore the ordinary and well-understood meaning of the phrase quoted, "and in competition therewith;" indeed, it would become necessary to read the statute as though the phrase were not there, for without the use of the words of qualification, the clear meaning of the statute would be as contended for by complainant.

But under all the canons of construction of statutes, no court, much less this Commission, may disregard the usual and well-known meaning of words in common use; for when such words are used it is to be presumed that the legislature intended thereby the usual and common meaning as understood by people generally, and there would appear to be no doubt concerning the usual and common meaning of the words "and in competition therewith" to be that striving to secure an object or thing indulged in by two or more persons or corporations at the same time. The use of the word "competition" conveys to the mind a clear, distinct and definite meaning as it ordinarily is used in this statute. As was said by Chief Justice Marshall in construing the legislative meaning of the words "necessary and proper" in the case of M'Culloch v. Maryland "if the word 'necessary' was used in that strict and rigorous sense for which the counsel for the state of Maryland contend it would be extraor-

dinary departure from the usual course of the human mind, as exhibited in composition, to add a word the only possible effect of which is to qualify that strict and rigorous meaning." M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579.

So in this case to give to the words "in competition therewith" the construction so forcibly contended for by counsel for complainant "would be a departure from the usual course of the human mind, as exhibited in composition." The Commission is satisfied that the legislature meant something by the use of the words or qualification or limitation and that the meaning was such as would not be a departure from "the usual course of the human mind, as exhibited in composition," and that the intent was to give jurisdiction to the Commission only in event an automobile service for the carrying of passengers and freight is in actual competition with a railroad or street railway in the conduct of its business over an established route or between fixed points.

In thus holding, the Commission recognizes the logic and reason advanced by complainant's counsel, and from the broad standpoint of the public interest such automobile service ought in any event be made the subject of state regulation, but that is a matter for the legislature to correct, if thought needful, and not for this Commission, when it is dependent upon a construction of a statute contrary to the plain and usual meaning of the words of common usage and understanding.

The Colorado statute is distinctive as pertains to the subject under discussion, and the Commission can find no statute of a similar wording in the public utilities acts of the various states. The authorities cited by complainant are not applicable to this case for this reason, and the cases examined disclose such a radical difference in the language used from that of the Colorado statute, that decisions of other jurisdictions are entitled to but little consideration as affording precedents in the construing of the Colorado statute.

Complainant urges as a further reason for the construction contended for, that a different construction would render the statute unconstitutional as being in conflict with Article V., § 22, of the Constitution of this state, which forbids class legislation. In view of the enactment by the people of this state of a

law amending § 1 of Article VI. of the Constitution, S. L. 1913, p. 678, title "Recall of Decisions," the power to question the constitutionality of any law of this state being vested solely in the supreme court, the Commission will not assume to pass upon such question.

For the reasons stated, therefore, the Commission is of opinion that the motion of the defendant to dismiss this cause for want of jurisdiction is well taken.

ORDER.

It is therefore *ordered,* that the motion of the defendant, the Rocky Mountain Parks Transportation Company, to dismiss this cause for the reason that this Commission has no jurisdiction to hear and determine the same under the allegations of complainant's complaint by virtue of the statute, be, and the same is hereby, sustained, and that this cause be, and the same is hereby, dismissed.

The Public Utilities Commission of the state of Colorado, Leroy, J. Williams, A. P. Anderson, Grant E. Halderman, Commissioners.

COLORADO PUBLIC UTILITIES COMMISSION.

RE JOHN T. DONOVAN et al.

(Application No. 125, Decision No. 441.)

Certificates of convenience and necessity — Materiality of evidence — Automobile service.

1. Objection that an auto bus line was a detriment to the highway, paid but little if any taxes, and would quite often be unable to operate during stormy weather, is not material in an application for a certificate of convenience and necessity.

Monopoly and competition — Occupied territory — Additional service.

2. A railroad operates its service according to its best judgment, but the regulatory authority may order additional service by other carriers to meet the reasonable requirements of the public, if the schedule of trains as operated fails so to do.

Certificates of convenience and necessity — Evidence required — Additional service.

3. It is not required that an applicant for a certificate of convenience show such a condition to exist as makes additional service indispensable to the necessity of the public, but merely that a reasonable necessity exists as will add to the convenience of the public.

Monopoly and competition — Occupied territory — Additional service.

Statement that the remedy for inadequate train service is not the licensing of another common carrier but the requirement of more efficient train service, p. 494.

Monopoly and competition — Occupied territory — Automobile service.

Discussion of the control of utilities to prevent fluctual competition by a new carrier entering territory already occupied, p. 495.

(LANNON, Commissioner, dissents.)

[April 23, 1921.]

APPLICATION for certificate of convenience and necessity for the operation of auto bus service; granted.

Appearances: H. A. Lindsley and George H. Swerer, for applicant; E. E. Whitted and J. L. Rice for the Colorado & Southern Railway Company and Chicago, Burlington & Quincy Railroad Company.

By the **Commission:** On February 16, 1921, application was filed by the above named applicants as copartners under the firm name and style of the Paradox Land & Transport Company for a certificate of public convenience and necessity for the operation of an auto bus for the transportation of passengers between Denver and Fort Collins over the main traveled highway between said cities, passing through Broomfield, Lafayette, Longmont, Berthoud, and Loveland into Fort Collins.

Applicants propose to operate an auto bus to accommodate 15 passengers, comfortably, and heated and lighted when necessary, twice each day between Denver and Fort Collins, of the latest approved type adapted to such service.

Notice of the filing of said application was given to the railway carriers operating in the territory affected with the result that the Union Pacific Railroad filed a motion, objection, and answer on March 3, 1921, and the Colorado & Southern Railway and the Chicago, Burlington & Quincy Railroad filed objection and answer to said application on March 1, 1921.

Thereafter, the Commission set the matter for hearing at its hearing room, Capitol Building, Denver, Colorado, for 10 o'clock A. M., Wednesday, March 23, 1921, at which hearing some testimony was taken and, upon request, the hearing was continued for one week and until March 30, 1921.

The issues involved are quite simple, it being alleged on the part of applicants that the public convenience and necessity require and will require the inauguration of an auto bus passenger line between said cities and towns, while the railway carriers object thereto upon several grounds, the principal one being that the public convenience and necessity does not require any additional facilities between said cities or towns than they now enjoy by means of passenger trains operated by the railway carriers.

On behalf of applicants, there was introduced in evidence its schedule of fares and that of the railway carriers between said cities and towns, whereby it appears that but little difference in fares is charged; in some instances it being a little less by railway and in others a little less by the proposed auto bus line. The applicant also submitted the proposed schedule of busses showing a service by auto bus northbound leaving Denver at 9:30 o'clock in the morning to arrive at Fort Collins 12:45 o'clock P. M., and leaving Denver at 4 o'clock in the afternoon to arrive at Fort Collins at 7:15 o'clock P. M.; southbound service proposed leaving Fort Collins at 9:30 o'clock A. M. to arrive at Denver at 12:45 P. M. and leaving Fort Collins at 4:30 P. M. to arrive at Denver at 7:45 P. M.

The railway carriers submitted evidence showing that the passenger service over the Colorado & Southern Railway between Denver and Fort Collins, as at present, leaves Denver at 8 o'clock A. M., 2:30, and 6 o'clock P. M. arriving at Fort Collins 11 A. M., 5:42, and 8:47 o'clock P. M.; over the Union Pacific Railroad leaving Denver at 8 o'clock A. M. and 4:30 P. M. arriving at Fort Collins 10:25 A. M. and 6:45 P. M. Southbound the Colorado & Southern Railway trains leave Fort Collins at 7:10 and 8:40 A. M. and 3:20 P. M. and arrive at Denver 10:15 and 11:30 A. M. and 6:30 P. M.; Union Pacific leaves Fort Collins at 7:45 A. M. and 2:35 P. M. arriving at Denver at 10 A. M. and 5 P. M. The Burlington service affects none of the towns involved

except Lafayette and Longmont while Union Pacific service affects no towns outside of Denver but Fort Collins of those proposed to be served by the auto bus line.

From this statement of existing train schedules and the proposed auto bus schedule, it will be seen that the auto bus line proposed to leave Denver northbound twice daily, at 9:30 o'clock in the morning, an hour and thirty minutes later than the Colorado & Southern Railway, and at 4 o'clock in the afternoon, an hour and thirty minutes later than the Colorado & Southern, to arrive at the cities and towns affected at such times as approximately to be midway between arrivals and departures of the Colorado & Southern trains; and the same is true of the auto bus schedule southbound.

[1] Much of the matter injected into the hearing by the testimony had to do with matters entirely foreign to the issue, such as the objection of the carriers that the auto bus line was a detriment to the highway, paid but little if any taxes, and would quite often not be able to operate during stormy weather, all of which are not involved in applications of this character.

The sole issue as the Commission understands the law is, whether public convenience and necessity requires and will require the operation of the proposed auto bus passenger line. Whether or not the auto bus line can be operated at profit is not involved, that being the risk undertaken by the applicant; whether or not the railway carriers will be affected is not involved except as to whether the public convenience and necessity is adequately served by the existing means of transportation.

At the conclusion of the hearing, time was given for the filing of briefs, with the result that the Colorado & Southern Railway and the Chicago, Burlington & Quincy Railroad filed an exhaustive brief in support of their position that no sufficient showing was made by applicant to warrant the issuance of the certificate applied for. Applicant in its reply brief urgently insists that public convenience and necessity requires an additional means of transportation between the towns and cities affected and largely because of the fact that the service afforded by the present railway carriers to passengers to the cities and towns named is a morning and afternoon service in either direction, by the Colorado & Southern Railway, the principal rail carrier, one train in

the forenoon out of Denver serving the communities named, while two trains in the afternoon at 2:30 and 6 P. M. are operated; southbound two trains leave Fort Collins in the morning and one in the afternoon. The result is the passenger who is not destined for Denver, and desires to travel from one town to another is not able to leave without a long period of waiting and it is contended by applicant that the bus line proposed will afford such traffic a convenient and necessary method of traveling without such long delay.

[2] The carriers insist that if the rail service being operated does not suit the public convenience, then the trains may be "scattered" through the day. One train operated by the Colorado & Southern is an interstate train, so that its schedule is determined for other than local travel. A carrier operates its service according to its best judgment, but the regulatory authority may order additional service to meet the reasonable requirements of the public, if the schedule of trains as operated fails so to do.

The Public Utilities Act of this state is rather obscure concerning what condition is necessary to be shown to exist to entitle an applicant to a certificate of public convenience and necessity, and the instant case is the first time that the railway carriers have opposed the issuance of such certificate to an applicant for the transportation of either passengers or freight, and a number of such certificates have heretofore been granted by this Commission.

In Application No. 62, decided January 17, 1920, the Overland Motor Express Company applied for a certificate of public convenience and necessity for the transportation of freight by auto truck between Denver and Boulder. This application was resisted by an existing auto freight truck carrier who had theretofore been granted a certificate, but no railway carrier made objection or appeared in opposition to such application. In the course of that decision, this Commission undertook to construe the legislative meaning of the phrase "public convenience and necessity" as used in the Public Utilities Act, and based largely upon the interpretation of the New York Act by the New York Public Service Commission in Re Troy Auto Car Co. P.U.R. 1917A, 700–707, wherein it was held that the words "conven-

ience and necessity" could not be split in two; that a thing necessary would always be convenient and that to show a strict necessity was not required. In other words "convenience" and "necessity" must be construed together to mean such a state of facts exists as show a reasonable necessity to meet a convenience of the public. As stated in the New York case, *supra* "taking the phrase 'convenience and necessity' as an entity, it does not mean to require a physical necessity or an indispensable thing." Re Overland Motor Express Co. P.U.R.1920B, 551.

[3] So, in the instant case, it does not require that applicant shall show such a condition to exist as is indispensable to the necessity of the public, but merely that a reasonable necessity exists as will add to the convenience of the public; which cannot be disputed under the evidence in this case. A traveler between Longmont and Loveland, for example, northbound may travel by existing passenger trains but once in the forenoon and twice in the late afternoon, while southbound he may travel twice in the early forenoon and but once in the late afternoon. With the establishment of the auto bus line, such traveler would be enabled to travel between Longmont and Loveland about noon northbound and in mid-forenoon southbound while the afternoon service would give such traveler the privilege of traveling north and southbound between said cities in the late afternoon.

The Commission concludes, therefore, that sufficient showing has been made by applicant to justify the issuance of the certificate applied for, it having exhibited and filed with the Commission a showing by the respective towns and cities through which it proposes to operate, that no license fees are required for the operation of such auto bus line.

Lannon, Commissioner, dissenting: This is a case wherein the applicants asked in their original petition for a certificate of public convenience and necessity for the operation of an auto bus line between Denver, Fort Collins and intermediate points, for the hauling of freight, passengers, and express. At the hearing, however, they dropped the matter of freight and express and confined themselves exclusively to that of hauling passengers.

The time table first presented by applicants was so nearly identical with that of the Union Pacific and Colorado &

Southern that the whole scheme of the applicants showed conclusively that the proposed operation of the auto bus line was being launched under a subterfuge and was an attempt to secure a certificate for doing a transportation business with an eye single to their own interests, and not in any sense to serve as either a public convenience or a necessity. This is perfectly obvious when one takes into consideration the fact that the section of country in which this auto bus line proposes to operate is served by the Denver & Interurban Railroad between Denver and Broomfield, and likewise Lafayette by means of Colorado & Southern connections and from Denver to Fort Collins by the Colorado & Southern and the Union Pacific Railroads, the latter being considered one of the leading and best railroads of the United States. In addition to this, the Burlington also serves Longmont and Lafayette with a train each way daily.

With the Denver & Interurban reaching Broomfield with an hourly service, the Union Pacific running two trains daily, one in the morning and one in the afternoon, in each direction between Denver and Fort Collins, with the Colorado & Southern running three trains each way, leaving Denver at 8 A. M., 2:30 P. M. and 6 P. M. northbound, and departing from Fort Collins at 7:10 A. M., 8:40 A. M., and 3:20 P. M. southbound, for Denver, and also with the Burlington leaving Denver at 2:45 P. M. for Lafayette and Longmont and arriving at Denver from these places at 11:15 A. M., certainly with such a plethora of train service it would seem there could scarcely be an excuse, much less a need, for the proposed bus line.

Such service as the foresaid is far more adequate than is furnished in many more populous sections of our country. If, perchance, the service furnished the section between Denver and Fort Collins is thought to be insufficient, the proper remedy is not to license another common carrier in the district and thereby deplete the vanishing revenues of the steam roads that are now operating at a loss. The legislature has very wisely provided for the production of efficient train scervice so that this Commission, if there is any dereliction in this respect, has ample power to compel the railways to modify their schedules to meet the needs of the public, as provided in the laws of Colorado relating to Public Utilities in the following section:

Section 26. "Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any railroad corporation or street railroad corporation, or person operating any such railroad or, street railroad does not run a sufficient number of trains or cars, or does not possess or operate sufficient motive power, reasonably to accommodate the traffic, passenger or freight transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the Commission shall have the power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time of starting its train or car or to change the time schedule for the run of any train or car, or to change the stopping place or places thereof, or to make any other change the Commission may determine to be reasonably necessary to accommodate and transport the traffic, passenger, or freight, transported or offered for transportation."

It will be seen by § 2 (e) of Chapter 134, revised laws of 1915, provides that certificates for automobile lines are only required where they come in competition with a railway line. To my mind, this means that the act contemplates the protection of the railways of Colorado against onslaughts on their business by either freight or passenger automobiles, in any case where the railway or railways are furnishing the public an adequate service and one that meets with the reasonable requirements for convenience and necessity of the people in the communities served.

The public utilities acts of the various states are the last word in the control of utilities, and were designed to prevent cut-throat competition. It also has a salutary effect, where enforced, in preventing large aggregations of capital from infringing upon or putting out of business weaker institutions that are giving effective public service. In fact, the law ignores the aphorisms that "might makes right" or "that competition is the life of trade," and proceeds on the theory that capital wisely and judiciously invested in a public utility shall be protected by the

public, by and for the uses of the public, not that it may be allowed rates so high as to work a hardship on the people, neither must they be so low as to not bring a fair return on the investment. To bring about such a state of affairs, our legislature enacted the Public Utilities Act and wisely provided such safeguards as would have a tendency to invite capital to this much needed field, and while demanding reasonable rates for the public, at the same time threw a bulwark around the utility, thus preventing the wiping out of honest investments and injury to the public by undue competition, a thing that, in public service, leads only to chaos and destruction.

While the respondent railway companies have to pay large amounts for taxes upon their lines and equipment, which said taxes are used for general county and state purposes including the upkeep of many country schools that could not exist without the said railway taxes, they are also compelled to keep up their own rail highways at their own expense and at the same time contribute very largely through taxes paid to the construction and maintenance of county and state highways in all counties in which their lines are located. Where the railroads are giving adequate service, as they are in this case, to grant a certificate of public convenience and necessity to an auto bus line using the public highways paralleling the railways to which the auto line has not contributed to either the building or upkeep, is manifestly unfair to the railways. To give an auto bus line a certificate under such circumstances is compelling the railways to contribute funds to help build up and maintain highways for the benefit of their rivals in the transportation business.

Owing to the vast investment of capital by the respondents herein, and the fact of their prior entry into this field, and the great benefits these railroads have bestowed in helping to build up the commerce, industries and educational institutions along their lines, should at least entitle them to fair play and a modicum of justice instead of subjecting them to a loss of business without in any sense giving recompense therefor to the people served. With the side tracks of the various railroads in this state lined with thousands of idle cars the applicants herein can not even plead shortage of equipment, and with this alarming state of affairs confronting these respondents, to grant the cer-

tificate asked for is but to invite financial disaster to the railroads.

If the railroads are allowed to be broken down by allowing auto bus lines to invade their territories and skim off the cream of their business during the summer months, then it will be possible to put the railways out of business. This would be a calamity, as none of our light paved roads, much less the dirt roads, could withstand the haulage of even a small portion of one train load of heavy freight. The operation of just a few trucks, hauling three or four tons each, after a rain or snow storm would convert our boasted fine highways into ploughed fields, making their further use worthless for not only freight traffic, but impossible for all other vehicles.

To my mind, communities like those between Denver and Fort Collins, serve by two splendid systems of steam railways and in part by two other system, operating numerous trains each day in the year be the weather good or bad, rendering excellent and adequate service, should not be jeopardized by the issuance of a certificate to a more or less temporary concern that can cease operations during storms, or permanently, at any time they may see fit to move their equipment to other fields.

If this Commission is to use wisdom in administering its regulatory powers, this is a case where it should be done, and to my mind if the intent of the law is to be carried out, the request for the certificate asked should be denied.

If certificates asked for operation of auto bus passenger lines are to be granted where there are two or more railways affording frequent and adequate train service, then and in that case we are giving away the substance for the shadow and there is absolutely no use for the law in this respect. The law becomes impotent to function in the realm in which it was intended to operate, namely, to effectuate adequate public service by the elimination of ruinous competition. I am unable to see in this record any proof adduced by the applicants of any inadequacy in the present steam road service. On the other hand, it appears beyond question, it seems to me, that such service is not only adequate, but indeed excellent, I doubt if its equal can be found in the state.

For the aforesaid reasons, I most respectfully dissent from the majority opinion as expressed in this case.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION.

IN RE TERMINAL TAXICAB COMPANY.

[Order No. 144; P. U. C. No. 1387/5.]

Valuation — Purposes — Whether existing rates reasonable — What rates are reasonable.

It is proper to assume that a valuation of a utility's property in compliance with the public utilities act is being made for the purpose of determining whether or not existing rates are reasonable and also for the purpose of determining what rates are reasonable.

Return — Earnings — Should cover operating costs and reasonable profit.

A utility is entitled to earn the whole cost of rendering the service and in addition thereto a reasonable return on the fair value of the property actually used and useful for the convenience of the public.

Valuation — Discarded property — Offset by depreciation reserve.

Certain automobiles of a taxicab company for which no sale could be found, even at junk-value prices, and which had been dismantled at a small cost, were excluded by the Commission from a valuation of the company's property made in compliance with the public utilities act, where it appeared that the reserve that had been maintained to offset depreciation on the automobiles was in excess of their original cost and the cost to dismantle, and this amount had been invested in other property of the company included in the valuation.

Valuation — Reproduction cost new — Working capital — Material and supplies.

A reasonable amount for working capital should be allowed in the valuation of a utility's property, which should include the material and supplies which experience has shown to be necessary to be kept on hand and enough cash to pay expenses until the collection of receipts provides a sufficiency.

Valuation — Reproduction cost — Working capital — Accounts receivable.

Only a very small amount of working capital should be allowed as accounts receivable in the valuation of a utility's property, since accounts receivable at different periods are offset by accounts payable, and regulations may be made prescribing the time and conditions of payment for services.

Valuation — Reproduction cost — Working capital — Notes receivable.

A claim for an allowance of working capital on account of notes receivable was excluded by the Commission in arriving at the value of a taxicab company's property, on the ground that it was not a continuing item and would practically disappear at the end of the calendar year.

Valuation — Reproduction cost — Working capital — Prepaid insurance.

One half of the sum paid in advance by a taxicab company for insurance was included by the Commission in its allowance of working capital in arriving at the value of the company's property, where it appeared that the company distributed this item by charging an equal portion thereof to expenses monthly.

Valuation — Reproduction cost — Working capital — Prepaid licenses.

One half of the sum paid in advance by a taxicab company for licenses was included by the Commission in its allowance of working capital in arriving at the value of the company's property, where it appeared that the company distributed this item by charging an equal portion thereof to expenses monthly.

Valuation — Reproduction cost — Working capital — Investments.

A claim by a taxicab company for an allowance of working capital on account of the cost of certain 4 per cent bonds deposited as security for the faithful performance of its contract with a terminal company was allowed by the Commission in arriving at the fair value of the company's property.

Valuation — Overhead charges — Discounts on capital stock.

Discounts on capital stock should be excluded from any consideration as property and set aside in an account which shall be amortized by assessments upon stockholders or from the return on the property under the principles prescribed by the Interstate Commerce Commission which are required by the organic act of the District of Columbia Commission to be followed where practicable.

Valuation — Overhead charges — Costs of securing special contract.

The costs connected with the securing of a contract by a taxicab company with a terminal company were excluded by the Commission in arriving at the value of the company's property.

Valuation — Overhead charges — Legal and organization expenses, omissions and contingencies.

An allowance of 1 per cent of the amount invested in the plant by the stockholders was made by the Commission to cover legal and organization expenses and omissions and contingencies in arriving at the value of a taxicab company's property.

Valuation — Going concern — Capitalization of net deficits disapproved.

The net amount by which a utility has failed to yield a reasonable return on the investment in its properties from its organization to date should not be capitalized.

Valuation — Good will — Not to be capitalized — Rate case.

The element of "good will" should not be capitalized in a rate-

making valuation, since such a procedure would have the inconsistent result of charging customers higher rates because of their very patronage.

Valuation — Rate purposes — Reproduction cost less depreciation — Reserve reinvested in utility property.

Cost of reproduction new less depreciation is a proper basis of physical valuation of a utility for rate-making purposes, where an ample depreciation reserve has been maintained, reinvested in property, and charged to property account, since the deduction of depreciation serves the purpose of restoring the equilibrium of the property account.

Depreciation — Buildings and electrical equipment — Accounting.

A taxicab company was ordered to conform its depreciation accounts to a rate of 3 per cent on the cost of property new for "buildings and electrical equipment of buildings."

Depreciation — Motor cabs — Accounting.

A taxicab company was ordered to conform its depreciation accounts to a rate of 21½ per cent on the cost of property new for "motor cabs."

Depreciation — Office furniture and fixtures, machine shop, tire room, and miscellaneous equipment — Accounting.

A taxicab company was ordered to conform its depreciation accounts to a rate of 7 per cent on the cost of property new for "office furniture and fixtures, machine shop, tire room, and miscellaneous equipment."

[April 2, 1915.]

PROCEEDINGS fixing the fair value of the property of a terminal taxicab company in compliance with the public utilities act.

By the **Commission**: Paragraphs 6, 7, and 8 of the public utilities law provide:

"Par. 6. That the Commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right of way; also the amount of money it would require to secure the right of way, reconstruct any roadbed, track, . . . and any other property or instrument not included in the foregoing enumeration used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. . . ."

"Par. 7. That the Commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation."

"Par. 8. That before final determination of such value the Commission shall, after notice of not less than thirty days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The Commission shall, within ten days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District Committees in Congress." [37 Stat. at L. 978, chap. 150.]

In compliance with this law an inventory of the property of the utility was made as of April 30, 1914, and a valuation made thereof. A copy of this inventory and valuation was furnished to the utility on November 3, 1914, together with a notice that a public hearing as to such valuation would be held on December 14, 1914. The hearing was held in accordance with the notice, at which all parties concerned were given an opportunity to make claim for any additional values, physical or otherwise, that may have been omitted from the tentative valuation, and also to make any arguments as to the method by which a fair value of the property of the utility should be determined. The arguments presented by the representatives of the utility were supplemented by a brief submitted by its attorney to the Commission on January 8, 1915.

The utility accepted, without objection, the valuation made by the Commission so far as the purely physical property is concerned.

Below will be taken up in order the points raised by the utility.

The utility assumes that the valuation is being made "for determining whether or not existing rates of charge for services performed by the company are reasonable." The Commission is of the opinion that it is proper to assume that the valuation is being made for this purpose and also for the purpose of determining what rates are reasonable.

The utility contends that—

"In such cases (cases similar to Kansas City Stockyards Case —(Cotting v. Godard) 183 U. S. 79, 46 L. ed. 92, 22 Sup. Ct. Rep. 30), the value of the particular services rendered to the particular individual or customer dealing with the concern is

not considered in fixing the rates or charges, or at least is not a paramount consideration, but the only determining factor seems to be the question whether a given rate will afford a reasonable return upon the value of the property devoted to the public use.

"While this may be a proper and logical method of determining reasonable rates in the class of public utilities described by Mr. Justice Brewer in the case cited, it does not follow, and it is not conceded, that such a method or rule is either sufficient or proper as a basis for determining rates in the case of a concern organized purely for profit, performing no functions of the state, having no monopoly nor exclusive legislative grants or privileges, and subject in every respect to the competition of commercial life as is the company here under consideration."

These arguments might more properly be submitted in support of the contention that this company is not a public utility, and not subject to the Commission's regulation, but that question has been settled by the courts.

This Commission is of the opinion that a utility is entitled to earn the whole cost of rendering the service, and in addition thereto a reasonable return on the fair value of the property actually used and useful for the convenience of the public. That the fair value of a utility's property is a proper and necessary basis upon which to regulate rates is well settled in reason and authority.

The utility notes the fact that "there is not included a number of automobiles (13), which were still owned by the company, but which had been completely charged off and were not carried as an asset;" also that this valuation does not include "twenty-five automobiles bought and added to the company's equipment before the hearing upon this matter and since April 30, 1914." A junk value of from $100 to $150 each was given to the above-mentioned lot of thirteen automobiles. Later developments have shown in fact that no sale has been found for them, and they have been dismantled at a small cost to the utility. The depreciation that has been accrued on these thirteen automobiles is $3,900 in excess of their original cost and the cost to dismantle. This amount is invested in other property of the company, and is included in that which is valued. The lot of twenty-five new automobiles could not be included because

they were not the property of the company at the date of the inventory and valuation.

The utility claims that working capital should be allowed as shown by the following items on the asset side of the general balance sheet, *viz.:*

Materials and supplies	$ 7,538.59
Accounts receivable	13,497.65
Notes receivable	2,835.30
Deposits	5,000.00
Insurance prepaid	7,106.80
Licenses prepaid	400.00
Investments	4,816.86
Cash	21,831.31
	$63,026.51
Less deposits, included above (which is a payment on new cars)	5,000.00
	$58,026.51
Reduced as a reasonable amount to	$50,000.00

The Commission is of the opinion that there should be allowed a reasonable amount of working capital. The amount necessary will vary with the kind of utility and with varying business practices. It should include the material and supplies which experience has shown to be necessary to be kept on hand, and enough cash to pay expenses until the collection of receipts provides a sufficiency.

Considering in that light the claims in detail, material and supplies on hand are fairly valued at $7,500.

Accounts receivable at different periods are counterbalanced by accounts payable. The credit extended to others is offset by the credit required from others. Regulations may be made by the utility, with the approval of the Commission, prescribing such time and conditions of payment for services rendered as will obviate the necessity of carrying more than a very small amount of working capital as accounts receivable.

Notes receivable is not a continuing item, but will practically disappear at the end of the calendar year 1915.

Deposits are excluded by the utility from the claim.

Prepaid Insurance.—It is necessary for the company to pay its insurance premiums in advance. They aggregate between $10,000 and $11,000 for the year. Since an equal portion is charged to expenses monthly, it follows that half the amount, or $5,000 for the year, would allow for the insurance expenses.

Prepaid Licenses Approximate $600.—Since an equal por-

tion is charged to expenses monthly, half the amount, or $300, would allow for prepaid licenses.

Investments.—Under the terms of the company's contract with the Washington Terminal Company, a deposit is required for the faithful performance of the contract; $4,816.86 is the cost of the 4 per cent bonds so deposited.

Cash.—The company is careful to keep no more money on hand than is found necessary to meet its payments; experience requires approximately $8,000 to be kept for current use.

The Commission is therefore of the opinion that $25,000 is a reasonable allowance for the working capital of this utility.

The utility makes a claim for certain organization and preorganization expenses. These expenses, it is stated, consisted of discount on the preferred stock, the services of those who secured subscriptions to the preferred stock, and the services of the organizers of the utility for securing from the Washington Terminal Company a ten-year contract to supply the Union station with taxicab and livery service. All of these expenses were covered by common stock of the utility. None of this common stock was sold, and the value of these expenses is arrived at by the utility as follows: The utility argues that because the market value of the preferred stock is $80, and because three shares of the preferred stock and one of common stock were sold for $300, the value of one share of common stock was $60 at the time of issue. And because that value was $60 the services for which it was issued were worth $60 or for the 522 shares so issued the services were worth $31,320.

In this argument, the fundamental assumption is not a fact. It has not been shown that the preferred stock was worth $80, and the common stock $60, a share. It would be more correct to state that the preferred stock was sold at par, and, in order to induce purchasers, each purchaser of so many shares was promised a percentage of whatever the utility should be able to earn over and above the payment of 7 per cent on the preferred stock. Moreover, the first 300 shares of preferred stock were sold to the officers and directors, and with each share of this was issued one share of common stock as a bonus. It might be argued that these sales of one common with each preferred for $100 should be used as a basis for determining the value of the common stock,

instead of the sale of one common with two preferred for $200. However, all these arguments are academic, and have no bearing on the fair value of the utility, as will be shown below.

The utility contends that the discount on the stock should be capitalized (1) because a generally recognized element in the cost of financing a new enterprise, and (2) upon the authority of the Wisconsin Commission. It does not appear that discount on stock is a cost of financing a new enterprise. A stock certificate is merely the evidence of ownership of a share in the property, profits, and risks of a corporation. Bond discount differs from stock discount in that bond discount is an adjustment of interest on a debt. The case before the Wisconsin Commission quoted by counsel for the utility in support of his contention is a case involving bond discount, and not stock discount. The Interstate Commerce Commission is very specific upon the method of handling discounts on capital stock, and has so expressed itself in the classification of accounts prescribed for Electric Railways effective July 1, 1914, page 75:

"Section 2. . . . By the term 'discount' is meant the excess of the par value of stocks actually issued or assumed over the actual cash value of the consideration received for such stocks.

. . . . . .

"Ledger accounts shall be provided to cover the discounts . . . on each class of capital stock issued or assumed by the company.

. . . . . .

"Entries in these accounts representing discounts shall be carried therein until offset (1) by premiums realized on subsequent sales of the same class of stock, (2) by assessments levied on the stockholders, (3) by appropriations of surplus for that purpose, or (4) by charges to profit and loss upon reacquirement of the stock.

. . . . . .

"In no case shall discount on capital stock be charged to or included in any account as a part of the cost of acquiring any property, tangible or intangible, or as a part of the cost of operation."

The effect of these rules is to exclude discount on capital

stock from any consideration as property, and to set it aside in an account which shall be amortized by assessments upon stockholders or from the return on the property. These rules are entirely consistent with sound principles, and the accounting principles prescribed by the Interstate Commerce Commission are required by the organic act of this Commission to be followed where practicable.

Concerning the compensation for the services performed in securing the contract with the Washington Terminal Company, the following facts are pertinent:

(1) The services were performed by officers and directors of the utility.

(2) The common stock was voted to themselves.

(3) The contract does not appear on its face to be a concession on the part of the Washington Terminal Company, since the contract provides that that company shall receive 12½ per cent of the receipts from business to and from the station, with a guaranty of as much as $6,000 annually. Under the contract the Washington Terminal Company received $11,000 during the calendar year 1914.

It is a well-established principle of accounting that all costs connected with the making of a business arrangement extending over a period of time, such as a lease or a contract, be not capitalized, but be charged off during the life of the business arrangement. It therefore follows that, had the compensation been paid in cash, the cost (which would then have been definite) would be charged off during the ten years which the contract runs.

However, as claimed by the utility, it is undoubtedly a fact that the starting of a new business involves an expenditure of money. In the case of a utility of this class, such expense is less than it would be in the case of a utility involving a large amount of construction work. The Commission is of the opinion that there should be allowed for legal work, organization, omissions, and contingencies 1 per cent of the amount invested in the plant by the stockholders, or $1,136.

The utility claims that there should be added to the physical value of the property as an element separate and distinct therefrom, the sum of $139,162.61 for "going concern" value. The amount claimed is arrived at by taking the sum of the assets

shown annually by the company's general balance sheet as "the actual cash capital invested in the business," and by taking the annual amount carried to profit and loss as the profits. Fifteen per cent is assumed to be a proper return on the investment; so 15 per cent of the sum of the assets is shown for each year and therefrom is deducted the annual profits; the remainder, it is claimed, shows the annual deficiency in return. The sum of these annual deficiencies makes the total of $139,162.61.

In order to show the error in principle made in arriving at these figures, the annual report of the utility for the fiscal year ended April 30, 1914, will be taken. Assume as stated that the investment during that year is $321,729.34. The balance sheet shows an accrued depreciation reserve of $72,103.11, which reserve was accrued by charges to operating expenses, for which nothing went out of the business. The transaction had the effect of lessening the book profits; the amount is in turn invested in actual property and included in the assets. It is therefore in the assets and deducted from the profits. To make the calculation correct it must be deducted from the assets. Audited vouchers amounting to $17,687.71 are included in expenses which also has the effect of lessening the book profits, and, until paid, they do not decrease the cash. To make the calculation correct, the amount of the vouchers unpaid should also be deducted from the assets. For a similar reason, the reserves for doubtful accounts and car liability amounting to $10,515.74, should be deducted from the assets. Making these deductions, a property value of $221,422.78 is obtained.

The figures for the other years having been arrived at in the same manner, it is evident that the conclusions as to the amount by which the profits of the utility have fallen short of a return of 15 per cent on the investment are in error. Applying to the utility's balance sheets of April 30 of each year the corrections indicated above, it follows that the average return has been 11¼ per cent on the investment as shown by the utility's books and 18½ per cent on the amount paid in on the capital stock.

But even if it is assumed that the utility has not received a reasonable return on the investment up to date, the Commission is of the opinion that this deficiency should not be capitalized. In fixing reasonable rates to be charged by this utility for

service, the Commission will consider the claim made by the utility that it is entitled to a reasonable return from the beginning of its operations.

The utility claims that there should be taken into consideration an element of "good will," but states that it is forced to the conclusion that there is no satisfactory way of computing its value.

Whatever value "good will" may have in the purchase of a business, it is not an element upon which the public should pay a return, and therefore not a thing to capitalize in a rate-making valuation. Such a capitalization would have the inconsistent result of charging customers higher rates because of their very patronage.

The fallacy of arguments for such elements of value will appear from two statements made by counsel for the utility in his brief, when these two statements are placed in juxtaposition. In arguing for "going-concern value," counsel states on page 27 of his brief: "This method of arriving at the 'going-concern value' by taking the sum of the deficiency in earnings below a fair return to the investors during the early years of development has been adopted by many other Commissions and courts." In arguing for "good-will value," counsel states on page 40 of his brief: "If, therefore, the earnings of the Terminal Taxicab Company had been sufficient in the past to produce a surplus over and above a reasonable return upon the value of its property or the investment in its business, the capitalization of that surplus might well be considered as the value of its 'good will,' and in this particular case would properly be allowed as an element in its total value at the time when it came under legislative regulation."

Expenses made necessary by competition, such, for instance, as extensive advertising, are amply taken care of by operating expenses, and therefore have a bearing on rates of fare, but do not affect fair value nor fair rate of return on the investment.

The utility urged upon the Commission the fallacy of adopting as the basis of physical valuation for rate-making purposes the cost of reproduction new less depreciation, and states it as a simple and unanswerable proposition that the consumer must

pay a rate which will afford a proper return upon the money originally invested in the property, which is its cost new.

The practice of this utility is to provide amply for the wear and waste in its property by crediting an ascertained amount of operating expenses to an appropriate reserve account. The cash thus accumulated is in turn invested in property and charged to its property account, so that there is then in the property account both the cost of the new addition and the old waste. It is obvious that the old waste must be deducted to arrive at the true cost of property. In this case the deduction of depreciation serves the purpose of restoring the equilibrium of the property account.

The Commission therefore finds the following values as of April 30, 1914:

Expended in the construction and equipment of the utility as shown by the utility's records	$232,116.69
Reproduction cost	233,482.50
Reproduction cost less depreciation	198,877.22
Subscribed by the stockholders	113,600.00
Accrued depreciation as shown by the utility's records	45,517.06
Accrued depreciation as found by the Commission	33,239.47

The Commission is further of the opinion that, in fixing the rates of fare to be charged for service by this utility, in so far as these rates are based on the fair value of the property of the utility there should be taken into consideration the following items:

Working capital	$25,000.00
Legal work, organization, omissions and contingencies	1,136.00

Paragraph 16 of the public utilities law prescribes:

"Par. 16. That every public utility shall carry a proper and adequate depreciation account. The Commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the Commission. . . ."

The Commission finds that the following annual rates of de-

preciation are proper and adequate for the several classes of property, and it is therefore *ordered:*

That the Terminal Taxicab Company conform its depreciation accounts to these rates of depreciation based on the cost of property new:

Buildings, and electrical equipment of buildings	3%
Motor cabs	21½%
Office furniture and fixtures, machine shop equipment, tire room equipment, and miscellaneous equipment	7%

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION.

IN RE AUTO LIVERY COMPANY et al.

[Order No. 158; Formal Case No. 32; P.U.C. No. 1507/5.]

Valuation — Working capital.

A reasonable amount should be allowed for working capital in the valuation of a utility's property, which should include the material and supplies which experience has shown to be necessary to be kept on hand, and enough cash to pay expenses until the collection of revenues provides a sufficiency.

Valuation — Working capital — Materials and supplies.

The cost price of materials and supplies which an auto-livery and taxicab company had on hand at the date of the valuation was included by the Commission in its allowance of working capital in arriving at the value of the company's property, where there was no suggestion that such amount did not satisfy the requirements of the company at that time.

Valuation — Working capital — Insurance.

One half the sum paid in advance by an auto-livery and taxicab company for insurance was included by the Commission in its allowance of working capital in arriving at the value of the company's property, where it appeared that the company distributed this item by charging an equal portion thereof to expenses monthly.

Valuation — Working capital — Licenses.

One half the sum paid in advance by an auto-livery and taxicab company for licenses was included by the Commission in its allowance of working capital in arriving at the value of the company's property, where it appeared that the company distributed this item by charging an equal portion thereof to expenses monthly.

Valuation — Working capital — Taxes.

A claim of one half of the amount of annual taxes as an allowance for working capital was excluded by the Commission in arriving at the value of an auto-livery and taxicab company's property, on the ground that no capital was necessary for taxes that were not paid in advance, and that they should be accrued from charges to the income account monthly for payment at the end of the fiscal year.

Valuation — Working capital — Cash.

The sum of $4,000 as cash in hand to meet the regular expense payments of an auto-livery and taxicab company was held sufficient by the Commission in making an allowance for working capital in arriving at the value of the company's property in view of the experience of similar companies.

Valuation — Going value — Service of officer.

A claim for the allowance as going value of a sum for the value of services rendered by an officer of an auto-livery company, for which no salary was paid, was excluded by the Commission in arriving at the value of the company's property, where it appeared that the company having but a nominal cash capital, the acquisition of its property resulted solely from the services of the officer, and that therefore their value was represented by the value of the property.

Depreciation — Rate — Motor-cabs.

An auto-livery and taxicab company was ordered to conform its depreciation account to a rate of 19.7 per cent on the cost of property new for motor cabs.

Depreciation — Rate — Furniture and equipment.

An auto-livery and taxicab company was ordered to conform its depreciation account to a rate of 9.3 per cent on the cost of property new for office furniture and fixtures, machine shop, tire room, and miscellaneous equipment.

[July 21, 1915.]

PROCEEDINGS for the valuation of the property of an auto-livery and taxicab company. The cost of reproduction new was fixed at $129,022.48; the cost of reproduction new, less depreciation, was fixed at $75,751.75.

Kutz, Chairman: Paragraphs 6, 7, and 8 of the Public Utilities law provide:

"Par. 6. That the Commission shall ascertain, as soon and as nearly as practicable, the amount of money expended in the construction and equipment of every public utility, including the amount of money expended to procure any right of way; also the amount of money it would require to secure the right of way, reconstruct any roadbed, track, . . . and any other property or instrument not included in the foregoing enumera-

tion used in or useful to the business of such public utility, and to replace all the physical properties belonging to the public utility. . . .

"Par. 7. That the Commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation.

"Par. 8. That before final determination of such value the Commission shall, after notice of not less than thirty days to the public utility, hold a public hearing as to such valuation in the manner hereinafter provided for a hearing, which provisions, so far as applicable, shall apply to such hearing. The Commission shall, within ten days after such valuation is determined, serve a statement thereof upon the public utility interested, and shall file a like statement with the District Committees in Congress." [37 Stat. at L. 978, chap. 150.]

In compliance with this law, an inventory of the property of the utility was made as of June 30, 1914, and a valuation made thereof. A copy of this inventory and valuation was furnished to the utility on May 1, 1915, together with a notice that a public hearing as to such valuation would be held on June 7, 1915. The hearing was held in accordance with the notice, at which all parties concerned were given an opportunity to make claim for any additional values, physical or otherwise, that may have been omitted from the tentative valuation, and also to make any arguments as to the method by which a fair value of the property of the utility should be determined. The arguments presented by the representative of the utilities were supplemented by a letter in the nature of a brief submitted by the utility's attorney to the Commission on June 21, 1915.

The utility accepted without objection the valuation made by the Commission so far as the purely physical property is concerned.

The utility claims that working capital should be allowed as shown by the following items, *viz.*:

(a) Parts and supplies	$5,854.58
(b) Insurance $8,154.64 (half)	4,077.32
(c) Licenses 692.25 (half)	346.13
(d) Taxes 1,734.80 (half)	868.90
(e) Cash required to be in hand	6,000.00
Total	$17,146.93

The Commission is of the opinion that there should be allowed a reasonable amount of working capital. The amount necessary will vary with the kind of utility and with varying business practices. It should include the material and supplies which experience has shown to be necessary to be kept on hand and enough cash to pay expenses until the collection of revenues provides a sufficiency.

In that light the claims are considered below in detail.

Parts and Supplies.—Reference to the transcript of the hearing on page 5, the testimony of Mr. Mattingly, gives the above claimed amount as the value of material and supplies on hand December 31, 1914. This valuation is made as of June 30, 1914, at which time the value of the material and supplies on hand, taken at their cost price, was $5,303.13. There is no suggestion that that amount did not satisfy the requirements of the company at that time. It is therefore taken to be reasonable.

Prepaid Insurance.—It is necessary for the company to pay its insurance premiums in advance. They aggregate about $8,000. Since an equal portion is charged to expenses monthly, it follows that half the amount, or $4,000 for the year, would allow for the insurance expenses.

Prepaid Licenses approximate $750 a year. Since an equal portion is charged to operating expenses monthly, half the amount, or $375, would allow for prepaid licenses.

Taxes.—One half of the annual taxes, $868.90, is claimed as working capital. Taxes are not paid in advance. They should be accrued from charges to the income account monthly for payment at the end of the fiscal year. None of the capital of the company is necessary for their payment, and therefore no allowance should be made for the item.

Cash.—The company usually keeps a larger balance of cash on hand than is absolutely necessary to meet its regular expense payments. The frugal management of cash as shown by the experience of other companies in the same business would make it possible to meet the expenses of this company with an allowance of $4,000.

The Commission is therefore of the opinion that $14,000 is a reasonable allowance for the working capital of this utility.

The utility makes claim for $21,000 for "the reasonable value of the services rendered by Mr. A. L. Cline as manager, treasurer, etc., of the Auto Livery Company, for which he drew no salary from it and has not been paid;" arguing that this amount "should be treated as a charge against said company and added to the present physical value of its property as 'going value.'"

It is a fact that the business was begun originally with a small amount of cash, and none subsequently added to it, and that its growth and success are due to the efforts of Mr. Cline. His services were practically all that was put into the business. The value of the property of the company at the present time is the measure of the value of those services for which no salary has been paid.

The Commission therefore finds the following values as of June 30, 1914:

Cost of Reproduction New and Cost of Reproduction New Less Depreciation.

Classification.	New.	New Less Depreciation.
1. Office furniture and fixtures	$3,018.65	$1,582.29
2. Motor cabs	108,865.00	58,725.00
3. Machinery and tools	2,000.00	833.06
Total items 1, 2, and 3	$113,883.65	$61,140.35
4. Add 1 per cent (see note below)	1,138.83	611.40
Total items 1 to 4	$115,022.48	$61,751.75
5. Material and supplies	5,303.13	5,303.13
6. Additional working capital	8,696.87	8,696.87
Total	$129,022.48	$75,751.75

Note.—Item 4 includes legal work, organization, omissions, and contingencies.

In addition to the above values the Commission finds the following:

Expended in the construction and equipment of the utility as shown by the utility's records	$126,847.97
Subscribed by stockholders	$ 0.00
Accrued depreciation as shown by the utility's records	$ 46,513.26
Accrued depreciation as found by the Commission	$ 53,270.73

Paragraph 16 of the Public Utilities law prescribes:

"Par. 16. That every public utility shall carry a proper and adequate depreciation account. The Commission shall ascertain and determine what are the proper and adequate rates

of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the Commission. . . ."

The Commission finds that the following annual rates of depreciation are proper and adequate for the several classes of property, and it is therefore—

Ordered:

That the Auto Livery Company and the Federal Taxicab Company conform their depreciation accounts to these rates of depreciation based on the cost of property new:

Motor cabs	19.7%
Office furniture and fixtures, machine-shop equipment, tire room equipment, and miscellaneous equipment	9.3%

Note.—In Re Barnett Taxicab Co. P.U.R.1915E, 6, July 21, 1915, the District of Columbia Public Utilities Commission found the rate of depreciation for motor cabs to be 15.7 per cent and for office furniture and fixtures, machine shop equipment, and miscellaneous equipment, 9.5 per cent, such rates to be based on the cost of reproduction new of the property on hand at the time of valuation, and on the original cost new in the case of property acquired thereafter.

Motor vehicle operators in the District of Columbia should secure the usual licenses from the assessor as provided for by ¶ 14, § 7, of the Act of Congress approved July 1, 1902, where applications to operate result from conditions incident to a strike of motormen and conductors on a street railway, and where no permanent route is to be established. Re Motor Vehicles (D. C.) Order No. 206, P.U.C. No. 2334, April 17, 1917. (P.U.R.1918C, 320.)

Note.—Speculation in Certificates.

The California Commission disapproves of the practice of securing certificates of convenience and necessity for the operation of motor busses and operating the service for a limited period of time until a purchaser can be found who will not only pay a reasonable value for the actual physical property proposed to be transferred, but a considerable amount in addition thereto for the operative rights, since no dependable transportation system can be established when individuals are permitted to speculate in such operative rights. Re Greer, P.U.R.1922C, 131.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION.

IN RE JURISDICTION OF THE COMMISSION OVER MOTOR-BUS LINES AND SIMILAR COMMON CARRIERS.

[Order No. 160; P.U.C. No. 1417–13.]

Automobiles — Common carriers — Defined routes — Jurisdiction of Commission.

Persons, firms, or corporations operating motor busses or motor vehicles along defined routes in the District of Columbia for hire or for the transportation of persons are engaged in the business of common carriers within the meaning of the Public Utilities law, and are therefore within the jurisdiction of the Commission.

[August 28, 1915.]

PROCEEDING to determine whether certain classes of motor vehicles are common carriers; ordered that operators of such vehicles should submit a statement of the number of vehicles operated, and the make, type, and seating capacity of each vehicle; a statement of the route or routes covered; and a copy of the schedule on which the busses are operated.

Brownlow, Commissioner: Under authority of the law and regulations relating to street traffic in the District of Columbia and of licenses duly issued by the Commissioners of the District of Columbia, certain persons, firms, and corporations have undertaken the operation of motor busses and other motor vehicles along certain defined routes in the District of Columbia for the transportation of persons for hire.

It now appears to the Commission that the motor-bus and motor-vehicle service has become established as an important means of transportation to the public.

The Public Utilities law defines the term "common carrier" as follows:

"The term 'common carrier,' when used in this section includes express companies and every corporation, street railroad corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any agency or agencies for public use

for the conveyance of persons or property within the District of Columbia for hire." [37 Stat. at L. 975, chap. 150.]

The Commission is of the opinion that this provision of law includes any person, firm, or corporation operating any public motor bus or motor vehicle for hire or for the transportation of passengers in the District of Columbia with sufficient regularity to enable the public to take passage therein at any point intermediate to the stable or stand of such vehicle, or operating such vehicle over a route sufficiently definite to enable the public to ascertain the streets and avenues on which such vehicles can be found *en route.*

In pursuance of this opinion and of all the facts developed, the Commission decides that the following named persons, firms, or corporations, operating motor busses or motor vehicles over defined routes in the District of Columbia are engaged in the business of common carriers within the meaning of the Public Utilities law, and are therefore within the jurisdiction of the Public Utilities Commission:

Arlington Barcroft Auto Company, Baltimore & Washington Boulevard Motor Company, Inc., Employees of Southern Railway Company at Potomac Yards, Va., Mrs. C. M. Singleton Jack, Jitney Bus Company, Inc., Thomas M. Nolan, Mrs. Agnes W. Maher, James M. Swain, Stein, Harris, & Dulcan, Virginia Auto Service Company, Inc., Selina M. Wright.

It is therefore *ordered:*

(1) That the above-named individuals and corporations, and such other individuals and corporations as now or may hereafter engage in the business of common carriers described above, shall comply with all the requirements of the Public Utilities law applicable to them.

(2) On or before the 10th day of September, 1915, the said persons shall submit the following reports:

(a) A statement of the number of vehicles operated and the make, type, and seating capacity of each vehicle so used.

(b) A statement of the route or routes covered in each case.

(c) A copy of the schedule on which the busses are operated.

(3) That the said individuals and corporations shall submit

such other reports, special or periodic, as may now or hereafter be required by law or by the orders of the Public Utilities Commission.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION.

RE UNION TRANSFER COMPANY.

[Formal Case No. 44; P. U. C. No. 979/9; Order No. 189.]

Valuation — Property not used or useful — Land.

1. Unused land which is a duplication of land in use, and land acquired to provide for the growth of the business and a possible extension into other business, which growth will not take place in the near future, cannot be included in a valuation of a baggage transfer company.

Valuation — Horse dying after valuation.

2. Some value may be allowed for a horse in a valuation proceeding, although the animal died shortly after the date as of which the property is being valued.

Valuation — Overhead charges — Amount.

3. An allowance of 11 per cent for omissions, contingencies, legal work, engineering and superintendence, insurance, taxes, and interest was held to be reasonable in a valuation of a baggage transfer company.

Valuation — Working capital — Amount.

4. An allowance of $1,500 for working capital, in addition to $1,500 for material and supplies, was held to be liberal in a valuation of a baggage transfer company having a rate-making value of $111,000.

Depreciation — Baggage transfer — Amount.

5. A baggage transfer company was ordered to conform its depreciation accounts to the following rates of depreciation, based on the cost of reproduction new: land, no depreciation; buildings, 2 per cent; electrical work and other equipment, 4.24 per cent; furniture and fixtures, 10.82 per cent; electric trucks, 10 per cent; electric batteries, 40 per cent; garage equipment, 4.58 per cent; wagons, wagon fixtures, buses, buggies, and baggage trucks, 5.50 per cent; horses, 8.19 per cent; harness and harness material, 12.93 per cent.

[September 27, 1916.]

PROCEEDINGS for the valuation of the property of the Union Transfer Company; at rate-making value fixed at $111,000, cost of reproduction new at $137,321.34, and cost of reproduction new less depreciation at $111,327.26, and order to conform depreci-

ation accounts to specified rates of depreciation for different items.

Kutz, Chairman: The Union Transfer Company is engaged in the business of hauling baggage. The main offices are in Philadelphia, Pennsylvania, and the business is conducted through branches located in several cities. The District of Columbia branch was established after the company had been organized and was in operation in other cities.

In compliance with ¶¶ 6, 7, and 8 of the Public Utilities law, an inventory of the property of the utility was made as of August 1, 1915, a reproduction new value and a reproduction new less depreciation value were made thereof, and the amount of money was ascertained which had been expended in the construction and equipment of the utility, used in or useful to its business. Copies of these values were furnished to the utility on April 27, 1916, together with a notice of formal public hearing as to such values. Hearings were held on June 24 and July 1, at which all parties concerned were given an opportunity to make claim for any additional values, physical or otherwise, that may have been omitted from the tentative valuation, to make objection to any values tentatively found by the Commission's representatives and to make claim that other values be substituted therefor, and also to make any arguments as to the method by which a fair value of the property of the utility, for the purpose of fixing rates, should be determined.

The utility adopted without objection the tentative valuation of the purely physical property, with certain exceptions, as follows:

Land: [1] This utility owns 18,207 square feet of land in square 257, and 16,506 square feet in square 755. On lots 6 and 7 and the property immediately south thereof in square 257 there is located a large building, used, according to evidence introduced by the utility, as a stable in connection with the conduct of its business, and there are located on lots A, B, C, and D four small houses. The evidence indicates that these four small houses and the lots on which they are located are not now used by the utility for the conduct of its business in the service of the public, and that they were bought for possible use in case of exten-

sion of the business. The land in square 755 is unimproved. The inclusion in the tentative valuation of four structures, valued new at $8,100, total, located on this land, is an error. These structures are located on land adjacent to that owned by this utility. Representatives of the utility testified that the land in square 755 was purchased because of rumors for many years that all the property south of Pennsylvania avenue would be taken by the government, which would deprive the utility of the property in square 257. The land in square 755 was selected because of its proximity to the union station. The board of assessors of the District of Columbia placed values on these properties, as follows: In square 257, an average of $3.35 per square foot; in square 755, an average of $1 per square foot. The utility introduced real estate experts who testified to values of the land in square 257 of an average of between $5.25 and $6 per square foot, and of the land in square 755 of an average of between $1.75 and $2 per square foot.

The land in square 755 is not used and useful in the conduct of the business of this utility. It is clearly a duplication of property, and should therefore be excluded from this valuation. The utility states that lots A, B, C, and D were acquired in 1895 and 1898 to provide for growth of the business and a possible extension into other classes of business. This property has not yet been needed to take care of the growth of the business, and there appears to be no prospect of such need in the near future. The inclusion of this land would not be justified for possible extension into other classes of business. It therefore appears that the land in square 755 and the land and improvements in lots A, B, C, and D must be excluded from this valuation. It appears further that $3.70 per square foot, on the average, is a fair value of the 12,707 square feet of land in square 257, exclusive of the 5,500 square feet in lots A, B, C, and D, making a total value of land of $47,015.90.

Buildings: The utility introduced evidence to show that the large building in square 257, used as a stable, should have a reproduction value new of $37,251.06, instead of $21,500, as shown in the tentative valuation. Further investigation has been made, and it appears that 21,500 is a liberal amount. As stated above, and two structures on lots A, B, C, and D of square 257 are not

actually used and useful for the convenience of the public, and must, therefore, be excluded. As is also stated above, the inclusion in the tentative valuation of four structures, valued new at $8,100, total, located in square 755, is an error.

Electric trucks: Evidence was introduced by the utility to show that the nine electric trucks given in the tentative valuation at $2,095 each are practically identical with the three trucks given at $2,410; that the amount $2,095 would be a fair value for each truck exclusive of the body, the condition in which they were purchased, but that bodies had been put on by the utility; that a fair average reproduction new value for the trucks would be $2,380 each. This amount is accepted.

Electric batteries: The utility introduced evidence to the effect that electric batteries Nos. 15, 16, 33, and 34 were in service on August 1, 1915; that Nos. 15 and 16 should be given a scrap value at that time, and that Nos. 33 and 34 should be given a value on that date of $65 each. It was also testified that the experience of the utility has shown that the life of the batteries is about thirty months. The utility claimed, therefore, that the cost of reproduction less depreciation should be $5,413.28, instead of $4,251.74. The claim for the inclusion of the four batteries referred to above is sound,—Nos. 15 and 16, at $15 each, and Nos. 33 and 34 at $65 each. The question of the life of batteries of this kind has been further investigated, and it appears that a life of thirty months, as claimed, is reasonable.

Horses: [2] Evidence was introduced to show that horse No. 4 was the property of the utility on August 1, 1915, and that some value should be given therefor, though the horse died on August 11. It appears that a value of $60 would be fair.

[3, 4] The utility also made claim for $20,000 for general costs, $1,500 for material and supplies, and $5,000 for working capital. It appears that the addition of 11 per cent for general costs is fair and reasonable. The utility's claim of $1,500 for material and supplies is accepted. A study of the records of this utility shows that $5,000 for working capital is excessive. The business of this utility is conducted in general on a cash basis, and a need for more than small amount of working capital has not been shown. It appears that $1,500 is a liberal amount.

No objection was made by the utility to the amount of money found to have been expended in the construction and equipment of the utility, used in, or useful to, its business.

The Commission, therefore, finds the following values as of August 1, 1915:

Cost of Reproduction New and Cost of Reproduction New Less Depreciation.

Classification.	New.	New Less Depreciation
1. Land	$ 47,015.90	$ 47,015.90
2. Buildings	21,500.00	19,000.00
3. Electrical work and other bldg. equipment	1,537.95	1,288.94
4. Furniture and fixtures	2,003.80	1,399.08
5. Electric trucks	28,560.00	19,728.75
6. Electric batteries	8,716.92	3,540.92
7. Garage equipment	122.05	102.04
8. Wagons, wagon fixtures, buses, buggies, and baggage trucks	7,377.00	3,484.92
9. Horses	2,395.00	1,260.55
10. Harness and harness material	1,781.60	770.13
Total items 1 to 10 inc.	$121,010.22	$ 97,592.13
11. Add 11% (see note below)	13,311.12	10,735.13
Total items 1 to 11 inc.	$134,321.34	$108,327.26
12. Material and supplies	1,500.00	1,500.00
13. Additional working capital	1,500,00	1,500.00
	$137,321.34	$111,327.26

Note: Item 11 includes omissions, contingencies, legal work, engineering and superintendence, insurance, taxes, and interest.

Accrued depreciation as shown by the utility's records (except land and buildings)	$21,659.68
Accrued depreciation as found by the Commission	25,994.08
Expended in the construction and equipment of the utility, as shown by the utility's records	86,882.99

The Commission also finds that, under the circumstances of this case, $111,000 is a fair value of this utility for rate-making purposes.

The Commission finds that the following annual rates of depreciation are proper and adequate for the several classes of property, and, in compliance with ¶ 16 of the Public Utilities law, it is, therefore, *ordered:*

[5] That the Union Transfer Company conform its depreciation accounts to these rates of depreciation, based on the cost of property new:

Land	No depreciation
Buildings	2.00%
Electrical work and other equipment	4.24%
Furniture and fixtures	10.82%

Electric trucks	10.00%
Electric batteries	40.00%
Garage equipment	4.58%
Wagons, wagon fixtures, buses, buggies, and baggage trucks	5.50%
Horses	8.19%
Harness and harness material	12.93%

Note.—Kansas.

Following Desser v. City of Wichita, 96 Kan. 820, 153 Pac. 1194, L.R.A.1916D, 246, it is held: First. That a city ordinance regulating street traffic which excludes those operating motor vehicles carrying passengers for hire from soliciting or receiving passengers within a certain zone of the city where there is street car service, is not an unlawful discrimination nor so arbitrary and unreasonable as to be invalid. Second. Such legislation is enacted for the public welfare, and not merely to benefit a particular common carrier, and the fact that the measure may result in great benefit to one carrier and great loss to another of a different class will not necessarily destroy the validity of the ordinance. Third. Whether the public welfare would be best subserved by extending traffic privileges to a street railway company and by withholding them from those operating motor vehicles within a certain zone of the city, is a legislative question, and the court may not substitute its judgment as to what the public good requires for that of the city Commission instructed by law with the discretion and power to determine the question. Decker v. Wichita, P.U.R.1922B, 57, — Kan. —, 202 Pac. 89.

Note.—Damage to Highways.

A certificate for the operation of an automobile passenger and freight line should be refused when it appears that existing railroad service adequately meets public needs, especially so in view of the fact that motor busses or trucks cause damage to roads far in excess of the damage caused by private cars, and do not contribute a due proportion to the cost of highway construction and maintenance. Re McGlochlin (Colo.) P.U.R.1922C, 215. The Commission said: "But leave the railroad entirely out of the case and view it only from the standpoint of the farmer and city home owner. They pay a very large proportion of taxes assessed for highway construction and maintenance. Some of them own and operate automobiles and some do not. If they do, the damage to roads from the occasional operation of their light, pneumatic tired cars is practically negligible. They seldom use the roads under weather conditions such that their use is destructive, while at certain seasons the heavily loaded freight and passenger trucks plough back and forth making great furroughs in the roads regardless both of conditions and consequences."

GEORGIA RAILROAD COMMISSION.

GEORGIA RAILWAY & POWER COMPANY

v.

JITNEY BUS COMPANY et al.

J. P. ALLEN et al.

v.

J. F. HAZLETON et al.

(Consolidated.)

[File No. 12216.]

Commission — Jurisdiction — Common carriers — Automobiles operated as jitneys.

Persons or corporations operating automobiles and motor cars for the transporting of passengers over fixed routes and at fixed rates are such common carriers as come within the jurisdiction of the Commission under the Georgia railroad law of 1907, § 6 (Code § 2663), which confers upon the Railroad Commission general jurisdiction and supervision "of all common carriers, railroads, express corporations or companies, street railroads," etc.

Commission — Jurisdiction — Statutory construction — Taxicabs and hackmen.

The duty of supervising and regulating taxicabs, hacks, and drays is not necessarily imposed upon the Georgia Railroad Commission by construing the Commission statute of that state so as to confer upon the Commission the duty of regulating jitneys, since such minor carriers differ from jitneys in that they have no definite fixed route or charges, and practically every service rendered by them is a special service rendered to an individual or individuals, and the vehicle is for the time exclusively for the use of such individual or individuals, and, without their consent, no one else can make use of it.

Statutes — Motor vehicle law — Police law not regulation of common carriers.

The Georgia motor vehicle law (approved August 19, 1913) is not intended to regulate common carriers, but is merely a police law of the state with reference to the use of the public highways.

Automobiles — Jitneys — Competition with street railways — Necessity of regulation.

The regulation of jitneys operating in competition with street cars is essential in order that the Commission may fairly, justly, and intelligently regulate the street railroad company's business, and intelligently decide whether its service is adequate.

[June 8, 1915.]

COMPLAINT and petition as to the supervision and regulation of jitney bus operations in the city of Atlanta and vicinity. The Commission, after deciding in the following opinion that it had jurisdiction over the operation of jitneys, ordered that the hearing be resumed on July 13, 1915, at which meeting all parties at interest would be afforded full opportunity to be heard with respect to the issues involved.

By **Candler**, Chairman: The Georgia Railway & Power Company is a Georgia corporation operating a city and suburban street railway system in Atlanta and vicinity, subject to the jurisdiction and regulatory powers of the Railroad Commission. It alleges that the respondents named in its complaint, and others, are operating upon, along, and over the streets of Atlanta and suburbs public conveyances in the shape of automobiles and motor cars, commonly known as "jitney busses," transporting passengers for hire and affording a means of transportation similar to that supplied by it, and in competition with it.

It further alleges that the business pursued by the respondents named is that of common carriers of passengers for hire, and as such is subject to the jurisdiction of and supervision by the Railroad Commission of Georgia.

It further alleges that the said business as now conducted by respondents is being done without any supervision, regulation, or control by any public authority; that the services and facilities furnished are not reasonably adequate, efficient, or safe, nor furnished in compliance with the laws of Georgia applicable to the business of common carriers of passengers. Petitioner prays that this Commission exercise the powers and authority conferred upon it by law with respect to common carriers, in the proper supervision and regulation of the business carried on by respondents, and all others engaged in similar business.

J. P. Allen and others, citizens of Atlanta, in their own and in behalf of other citizens, have filed with the Commission formal complaint making allegations and charges substantially similar to those of the Georgia Railway & Power Company against the same parties, and with substantially the same prayers.

By consent of all parties the two complaints or petitions were consolidated and heard together.

Respondents admit the allegations of complainants as to the character of the business in which they are engaged, and that under the laws of this state they are common carriers of passengers. They deny that they are such common carriers as, under the terms of the act of August 22, 1907, come under the jurisdiction of this Commission.

The issue thus made and heard is, in effect, a plea to the jurisdiction of the Commission, and it is this question which we shall now discuss and pass upon.

The full scope and purpose of our Commission's regulatory legislation as to public service companies or corporations can be clearly understood only in an historical reading and careful analysis of the different acts of the general assembly on the subject, beginning with the act approved October 14, 1879, creating the Commission and ending with the act of August 22, 1907, extending its jurisdiction and enlarging its powers and duties. Such a review is necessary to a proper decision upon the jurisdictional question raised in this record.

Under ¶ 1, § 2, article 4 of our state Constitution, it is mandatory upon the general assembly "to pass laws, from time to time, to regulate freight and passenger tariffs, to prohibit unjust discriminations on the various railroads of the state, and to prohibit said roads from charging other than just and reasonable rates, and enforce the same by adequate penalties."

The preamble to the act of 1879 recites this mandatory duty, and pursuant thereto the creation of the Commission as the administrative agency through which the duty upon the general assembly was to be discharged. Under the terms of the act, the Commission was given jurisdiction only over steam railroads, street railroads being excepted by name. The specific powers granted were, (1) to make just and reasonable freight and passenger rates; (2) to prohibit unjust discriminations, and to this end to examine all contracts between railroads; (3) to compel the issuance of freight receipts; (4) to make just and reasonable rates of charges for the handling and delivery of freights; and (5) to require the erection of suitable depots and stations. Extortionate rates and unjust discriminations by steam railroads were the two evils in the constitutional and legislative minds,

and their prohibition the chief objects of the creation of a Commission.

The Commission under the act of 1879 had a limited jurisdiction and limited powers as to the subjects of its jurisdiction, steam railroads. Under this act the Commission was vested with no powers of general supervision of railroads, the conduct of their business, the adequacy or sufficiency of facilities and services, safety of tracks and equipment, the keeping of proper accounts, the issuances of securities, etc. Its jurisdiction, powers, and duties remained practically the same for twelve years.

Under an act approved October 17, 1891, it was empowered and required to inspect, upon complaint, the physical condition of railroads, and, if found in a dangerous or unsafe condition, compel the necessary repairs to be made.

Under a second act approved October 17, 1891, it was empowered and required to fix storage rates for railroads, prescribe regulations in regard thereto, prescribe how suits should be brought for overcharges, and to fix the measure of recovery.

Under the act approved October 21, 1891, for the first time since its creation in 1879, the jurisdiction of the Commission was extended over other public service corporations than railroads; to wit, over express companies and telegraph companies, by name, and all the powers previously given (and no more) over railroads were extended over these companies, so far as applicable.

Under the act approved August 23, 1905, the power to make rules for the prompt receiving, forwarding, and delivery of freights by railroads, to require the prompt furnishing of cars, and to fix penalties for delays, was conferred.

Thus stood our Commission regulatory legislation prior to August 22, 1907. The Commission's jurisdiction included only steam railroads, express companies, and telegraph companies. Its powers related chiefly to rates, discriminatory practices, depot facilities, storage charges, and the prompt handling of freight. There were numerous statutes upon our books prescribing the duties of these corporations. Each had many charter obligations and duties, but no act from 1879 to 1907 imposed upon the Commission any duty of seeing that these statutory or charter obligations and duties were discharged, or gave to it any general

supervisory powers. The constitutionality and validity of the grants to it of such limited jurisdiction and powers as it had, had been early questioned in the courts by the railroads, and confirmed.

A quarter of a century of trial of limited regulation as to these three public service agencies by a Commission, having proved the wisdom and demonstrated the benefits of governmental regulation, the people of Georgia, in 1907, were of a mind to put into practice the same principles in regard to all public service agencies in the state, and to widen and extend the scope of governmental regulation beyond merely compelling just and reasonable rates and prohibiting unjust discriminations, to the point of general supervision and control of all such public agencies, to the end that the public might be adequately and efficiently served upon reasonable rates and without unfair discrimination.

This purpose was carried out in the act approved August 22, 1907, to revise, enlarge, and more clearly define the rights, powers, and duties of the Railroad Commission, and to enlarge and extend its jurisdiction.

In Wadley Southern R. Co. v. State, 137 Ga. 502, 73 S. E. 741, the supreme court said: "The general scope of this legislation [the act of 1907] was to retain to the Railroad Commission the power and authority heretofore conferred upon it by law, except as changed by the act, and to confer additional powers upon the Commission with the view that the Commission should be vested with a general supervision over public service corporations, with power to require them to establish and maintain such public service and facilities as may be reasonable and just."

The accuracy of this statement as to the purpose and scope of the act of 1907, it seems to us, is beyond question.

Code, § 2662 (§ 5 of the act), reads as follows:

"§ 2662. *Powers and Duties extended.* The powers and duties heretofore conferred by law upon the Railroad Commission are hereby extended and enlarged, so that its authority and control shall extend to street railroads, and street railroad corporations, companies or persons owning, leasing, or operating street railroads in this State. . . . over docks and wharves and corporations, companies or persons owning, leasing or operating the same; over terminals or terminal stations and corporations, com-

panies or persons owning, leasing, or operating such; cotton compress corporations or associations and persons or company owning, leasing or operating the same; and over telegraph or telephone corporations, companies or persons owning, leasing or operating a public telephone service or telephone lines in this state; over gas and electric light and power companies, corporations or persons owning, leasing or operating public gas plants, or electric light and power plants furnishing service to the public."

These powers and duties as hereinbefore numerated were limited; they were extended over only three subjects; their constitutionality and validity had been judicially passed upon; they had been exercised to the good of the public. Declared valid as to steam railroads, they would be valid as to street railroads; declared valid as to telegraph companies, they would be valid as to telephone companies; valid as to one common carrier they would be valid as to all common carriers, and so, without risk of further question or contest, they were extended over the important utilities enumerated.

This section, it should be kept in mind, simply extended old powers of the Commission over new subjects, designated in specific terms. No new powers were granted, and the old powers extended related chiefly to rates and discrimination. The section did not extend the jurisdiction of the Commission over all common carriers, and had the general assembly stopped here, there could be, of course, no contention that "jitney busses," or any common carrier other than those specifically mentioned, were placed under the jurisdiction of the Commission.

But the legislature did not stop here. In §§ 6, 7, and 8, it broadened the sweep, and apparently intended to gather together every regulatory power it had over corporations, companies, firms, or persons who had dedicated their property to the public use and hence liable to public regulation, and confer them on this Commission. The powers were conferred in broad, general terms, as for example, "The Railroad Commission shall have and exercise all the power and authority heretofore conferred upon it by law, and shall have the general supervision of," and then, as if apprehensive that some particular power or duty might be overlooked,

followed with a specific enumeration of important powers and duties.

The subjects over which these powers could be exercised are set out in § 6 of the act of 1907, now codified as follows:

"§ 2663. *Jurisdiction of the Commission.* The Railroad Commission shall have and exercise all the power and authority heretofore conferred upon it by law, and shall have the general supervision of all common carriers, railroads, express corporations or companies, street railroads, railroad corporations or companies, dock or wharf corporations or companies, terminal or terminal-station corporations or companies, telephone and telegraph corporations or companies within this state, gas or electric-light and power companies within this state; and while it may hear complaints, yet the Commission is authorized to perform the duties imposed upon it of its own initiative, and to require all common carriers and other public service companies under their supervision to establish and maintain such public service and facilities as may be reasonable and just, either by general rules or by special orders in particular cases, . . ."

It is significant to note that, while the additional powers of general supervision and control are here affirmatively conferred, the Commission has wide discretion as to when and how they shall be exercised. The language used authorizes the Commission, for example, "to require all common carriers and other public service companies under their supervision to establish and maintain such public service and facilities as may be reasonable and just, either by general rules or by special orders in particular cases . . ."

The act of 1879, § 5 (Code, § 2631), required the Commission to make just and reasonable rates for each railroad, and required it to prohibit unjust discrimination upon all railroads; not merely authorized it so to do.

This brings us to the contention of respondents that they were not intended by the legislature to be included within the classes of common carriers over whom the jurisdiction of the Commission was extended in the act of 1907, nor in fact actually so included; that the words, "shall have the general supervision of all common carriers, railroads, express corporations, or companies,

street railroads," etc., mean and were intended to mean only the particular common carriers named.

It further contends that the Acts of 1907 and 1879 must be construed together, and that light as to the kind of common carriers over which jurisdiction was granted in § 6 of the act of 1907 is had by reference to § 12 of the act of 1879, Code, § 2642, as follows:

"§ 2642. *Meaning of Terms.* The terms 'railroad corporation,' or 'railroad company' contained in this article [act in the original law] shall be deemed and taken to mean all corporations, companies or individuals now owning or operating . . . any railroad, in whole or in part, in this state and the provisions of this article [act originally] shall apply to all persons, firms and companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this state [street railways excepted], the same as to railroad corporations hereinbefore mentioned."

No one has ever contended that the act of 1879 covered all common carriers. It was expressly confined, as we have shown, to steam railroads. The terms defined in the above section, "railroad corporation" and "railroad company," without the comprehensive meaning thus given to them, would not have included all common carriers even over railroads, and hence the necessity for the section. The act, while intended to reach only steam railroads, also purposed to reach all of this class of carriers, and the sole purpose of the section was to so write the law as that no steam railroad should escape its operations.

The title to the act of 1907 declares one of the objects of its enactment was "to revise, enlarge, and more clearly define the powers, duties, and rights of said Commission," and it is difficult for us to grasp the force of the contention that the enlarging act of 1907 must be interpreted by the restrictions in the act of 1879.

A statute is said to have effect according to the purpose and intent of the law maker. The intent is the essence of the law, and the primary rule of construction is to ascertain and give effect to that intent. The Supreme Court of the United States has declared, "the primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language

that he has used. He is presumed to know the meaning of words and the rules of grammar."

"Very strong expressions have been used by the courts," says an eminent law writer, "to emphasize the principle that they are to derive their knowledge of the legislative intention from the words or language of the statute itself which the legislature has used to express it, if a knowledge of it can be so derived."

The words of a statute are to be taken in their ordinary and popular sense, unless so construed some incongruity or manifest absurdity results.

Following these rules of construction, substantially embodied in our own Code, it is impossible for us to construe the terms, "all common carriers," "every common carrier," and "any common carrier," as used in the act of 1907, to mean other or less than what their ordinary use and signification indicate. We take it that the term "all common carriers" means all common carriers, and not some common carriers; that the term, "every common carrier," in this state means all common carriers, and not some or all but one, if the ordinary meaning of very common words and language is to be given them.

In discussing the proper construction to be given the word "all" in an Indiana statute, the supreme court of that state said (Pittsburgh, C. C. & St. L. R. Co. v. Lightheiser, 163 Ind. 259, 71 N. E. 218):

"We would not be understood, however, as asserting that the word as used in legislation is always to be understood as an all inclusive one. As so used, it is a general term which is to be understood as comprehending whatever is within the outmost circle of the meaning of the word, unless, after subjecting the statute to interpretation and construction, there is sufficient reason for holding that the term was not used in so broad a sense. . . . As indicated, there must be a reason which warrants the court in concluding that the word was not used according to its primary meaning to justify a holding that it was used in a more restricted way, for courts cannot create exceptions in the operation of statutes, but at the most can only recognize such exceptions as the legislature has created."

The contention that the general term, "all common carriers," followed by certain named common carriers, restricts the general

term to only such carriers as are named, further appears without force when it is noted that among the specially named corporations over which jurisdiction is given are several that are not common carriers at all. To confine jurisdiction to the corporations specified by name is to wholly ignore the general term, "all common carriers." Under this construction its use was senseless and unnecessary. It is made to mean nothing, considered alone or in connection with the context. The doctrine of *ejusdem generis* does not apply, because the generic term precedes the specifics, and does not follow them. We do not agree with the contention that the boundary lines of the Commission's jurisdiction are or were intended to be no more comprehensive than as fixed in § 5 of the act of 1907. As already shown, § 5 extended the old powers and duties of the Commission over named new subjects. Section 6 extended new powers and duties over new and old subjects. Under § 5 the old powers and duties of the Commission were extended over compress companies. They are not included in the companies over which the new and additional powers conferred in § 6 are extended.

It has been contended that the intention of the legislature to place only the common carriers named in § 5 of the act under the Commission's jurisdiction is evidenced by the fact that as originally passed the title of the act enumerated the same subjects as § 5, omitting altogether the words, "all common carriers."

While it is not necessary to set out every detail of a legislative bill in the title, it is admitted that a measure of support might be found for this contention of respondents had the term, "all common carriers," or other terms of like import and meaning, been used casually or incidentally, or only in § 6 of the act. The intent of the legislature must not be looked for alone in the title of the act or in one section, or anywhere other than in the entire bill. The term, "all common carriers," occurs twice in the very vitals of § 6 with reference to the jurisdiction, powers, and duties of the Commission.

Section 12 of the act, as codified (§ 2667 of the Code), in part reads as follows:

"Every common carrier, railroad, street railroad, railroad cororation, street railroad corporation, express, telephone, telegraph, dock, wharfage, and terminal company or corporation within the

state and other corporations, companies or persons coming under the provisions of this section [or act in the original act of 1907], and all officers, agents, and employees of the same, shall obey, observe and comply with every order made by the Commission under authority of law. Any common carrier, railroad, street railroad, railroad corporation, street railroad corporation, express, telephone, telegraph, dock, wharfage or terminal company or corporation, cotton compress company within this state, and other corporations, companies or persons coming under the provisions of this section [originally "act"] which shall violate, . . ."

Here it will be noted, the words, "every common carrier," precede the specifically named carriers. Further on the words, "any common carrier," likewise precede the specifically named carriers, coupled significantly with the words, "within this state," the balance of the sentence being, "and other corporations, companies, or persons coming under the provisions of this act."

The repeated and deliberate use of terms which, taken in their ordinary meaning, can only show that the legislature had in mind all and every common carrier in this state, appears to us could not have been accidental, careless, or without purpose. We are constrained to believe that their repetition throughout the act constituted a studied effort to use such specific and general terms as, when taken together, would leave no doubt or room to question the intention of the lawmaker to include within the scope of the act every common carrier of every character within this state. In our opinion, the omission of the words, "all common carriers," in the title of the act was more likely an oversight on the part of the draftsman of the bill, than that the repeated use of the term and of others of like import in the body of the act, was ignorant or meaningless.

It is suggested that if this Commission attempts to exercise jurisdiction over all common carriers within the state, including jitney busses, then it must exercise the same powers as to taxicabs, hacks, drays, and other like minor carriers, and that the general assembly could not have intended to impose upon this Commission the supervision and regulation of such trivial institutions.

We concede that the task of effectively regulating the business, charges, and practices of all the hackmen, draymen, and other carriers of this class in the state, would be an almost impossible

duty, and in this fact there might be ground for argument that the legislature did not have hackmen, draymen, and cabmen in mind in using the comprehensive terms of the act of 1907.

Be this as it may, two things are clear to us:

1. Section 6 of the act of 1907, enlarging the jurisdiction of the Commission, as heretofore stated, in words declares that the Commission "shall have the general supervision of all common carriers," etc., and is authorized to require all common carriers, etc., to establish and maintain such public service and facilities as may be reasonable and just. The Commission is, we take it, vested with a discretion as to when and how to exercise its regulatory powers.

2. The business carried on by respondents is not that of hackmen. The latter have no definite fixed routes or charges. Practically every service rendered by them is a special service rendered to an individual or individuals. Until called into service a hackman cannot know in advance what it is nor the charge which may be reasonably made therefor. He undertakes, under a special contract, to deliver his patron at a particular destination, to be designated by the patron. The vehicle for the time is exclusively for his use, and without his consent no one else can enter it.

The jitney, on the contrary, has its regular fixed route; its charge is fixed; it is the same for any distance over that route, whether only a fraction or the whole of it; the passenger cannot demand transportation to a point not on this route; he has no exclusive right to the use of the vehicle for any distance or for any period of time; the carrier, so long as he has room, must take on everyone who desires transportation on that route, subject of course to reasonable rules and regulations. The service offered and rendered is common to all the public, and available to all, under reasonable rules and regulations, who desire it. It renders substantially the same service to the public that the electrically driven trolley car performs. The need for regulation is far more apparent than in the case of a hackman. Engaged in the same business of urban street transportation, alongside and in direct competition with the trolley car, and with a volume of traffic by no means inconsiderable, it is not apparent that there is less need of regulation than there is for the trolley. Indeed, it was admitted by counsel for respondents that regulation was desirable

and needful. Counsel at the same time contended that in the motor-vehicle law approved August 19, 1913, the general assembly had undertaken direct regulation of his clients and all the regulation it deemed necessary.

It hardly seems necessary to discuss this act as one intended to regulate common carriers. It is merely a police law of the state with reference to the use of the public highways of the state by all motor vehicles, whether run in private, individual use, or as public carriers, for pleasure or profit. There is nowhere in the law a syllable to suggest an intention to regulate a business.

The character of the business conducted by the operators of jitney busses, sustains our opinion upon the jurisdictional question raised in this case. It is identical with that conducted in this and other cities of the state by street railroads. They seek the same patronage, over the same routes, for the same charges, under similar conditions, except that the street railroad company occupies and uses a fixed space in the street for which it pays, while the jitney uses any part of the street necessary to its business, for which it does not pay.

The business of these common carriers is not confined to urban transportation. They are conducting public transportation businesses at this time in several sections of the state, in active and successful competition with steam railroads, using the public highways for these purposes. The Commission has in its files time-tables printed and distributed by the "Royal Blue Line," A. W. Elliott, Manager, Weston, Georgia, in which it clearly holds itself out as a common carrier. If there be any sane reason for governmental regulation of the business of railroad common carriers of passengers between Lumpkin and Macon, or Americus and Albany, it must apply with equal force to the same business as conducted by the "Royal Blue Line."

Time-table No. 3 of this common carrier is as follows:

"ROYAL BLUE LINE"
A. W. Elliott, Mgr., Weston, Ga.
First Class Service at 4c Per Mile.
Time Table No. 3.
Daily and Sunday Schedule Effective May 18th, 1915.
———Schedule———
Between Lumpkin, Richland, Americus and Macon.

Read Down			Miles		Read Up			
No. 7 P.M.	No. 5 A.M.	No. 3 P.M.	No. 1 A.M.		No. 2 P.M.	No. 4 A.M.	No. 6 P.M.	No. 8 A.M.
3:30	6:30		6:30	0... Lumpkin ...	7:00		3:10	6:30
4:00	7:00		7:00	10... Richland ...	6:25		2:35	6:00
	7:35		7:35	20.... Preston	5:50		2:00	
	8:10		8:10	30.... Plains	5:15		1:25	
	8:50	12:10	8:50	40... Americus ...	4:40	10:40	12:50	
		12:45	9:25	50. Andersonville .	4:05	10:05		
		1:20	10:00	60.. Oglethorpe ..	3:30	9:30		
		1:30	10:10	62.. Montezuma ..	3:20	9:20		
		2:05	10:45	74. Marshallville .	2:45	8:45		
		2:30	11:10	83.. Ft. Valley ..	2:20	8:20		
		3:00	11:40	95.... Byron	1:50	7:50		
		3:50	12:30	112.... Macon	1:00	7:00		

SCHEDULE

Between Americus and Albany

Read Down	Miles		Read Up
No. 9 A.M.			No. 10 P.M.
8:50	0	Americus	12:50
9:25	13	Smithville	12:05
10:00	26	Leesburg	11:30
10:30	36	Albany	11:00 A.M.

SCHEDULE

Between Weston and Richland

Read Down	Miles		Read Up
No. 11 A.M.			No. 12 P.M.
5:30	0	Weston	4:40
6:00	10	Richland	4:10

Special Care Taken of Ladies and Children.

News Publishing Co., Richland, Ga.

We do not see how there can be any proper and effectual regulation of the business of one carrier of passengers over a given route or street, unless the same regulatory supervision is exercised over every other competing carrier in the same business on that particular route.

For example, at this time, under order of this Commission seeking to provide reasonably adequate transportation service on Marietta street in this city, the street railroad company is operating cars upon a 15-minute headway. In competition with the street railroad company, there are being operated on week days, say, ten "jitneys;" the combined facilities of the two agencies sufficiently care for the traffic.

We will suppose that a series of baseball games are scheduled for Ponce de Leon park next week, or that a circus is to give ex-

hibitions on Jackson street for two days. Crowds may be thronging to these places, and the prospect of fares looks good to the jitneys, whereupon they all forsake Marietta street every afternoon to operate to the ball park or the circus grounds, with the result that the Marietta street public is deprived of that considerable percentage of its transportation facilities ordinarily supplied by the jitneys, is forced to depend upon the street cars, and finds the 15-minute headway schedules inadequate. Under such conditions how can the street car company know upon what headway to operate its schedules, or how could this Commission know when such conditions were likely to arise?

We repeat that in order for this Commission to fairly, justly, and intelligently regulate the street railroad company's business, and intelligently decide whether its service is adequate, it is essential that it have the same powers over other public service operators in competition with it over the same routes. This is in the interest of the public, and not of the street railroad company.

Passenger transportation service, to be of value to the public, must be regular and dependable. No common carrier in this state now under the regulatory supervision of this Commission is allowed to discontinue temporarily or abandon permanently any established service, without the consent of this Commission. No one questions the wisdom of this regulation.

The same regulation ought to apply to the jitney, if it holds itself out as a common carrier and expects to establish itself in the confidence of the public as a dependable transportation agency.

We have attempted to demonstrate that respondents in this complaint not only come within the letter of the law prescribing the jurisdiction of this Commission, but also clearly within its spirit and general scope, and that there is plain need of some governmental supervision and regulation of their business. In these years of progress and invention, new and improved transportation agencies and means of communication are being constantly brought into existence and use. No one can to-day anticipate what new or as yet undreamed of agency may be in common service a decade hence. The general assembly of 1907 had as keen an appreciation of this truth then, as we have to-day,

and in the act we have been discussing, evidently purposed, in the use of such general words as "all common carriers," "every common carrier," and "any common carrier," to include all those agencies of public transportation then in use and known to it, and also such as would later come into use and public service as common carriers. It was legislating for the future as well as for the then present.

In 1847, when steam railroads were first being constructed in Georgia and in this country, our state supreme court decided the case of Fish v. Chapman, 2 Ga. 349, 46 Am. Dec. 393, one of the leading cases in this country on the law of common carriers. The following quotation from the opinion written by Mr. Justice Nisbet is peculiarly interesting in this connection:

"This is an age of railroads, steamboat companies, stage companies, locomotion, and transportation. It is an era of stir—men and goods run to and fro—and common carriers are multiplied. The convenience of the people and safety of property depend more now, I apprehend, upon the rules which regulate the liability of these public ministers than at any other period of the world's history. Steam as a transporting power has supplanted almost all other agencies, and it is used for the most part by public companies or associations. It is very important that their liability should not only be accurately defined, but publicly declared."

If this great and learned Georgia jurist could come back to his native state to-day, he would stand amazed at the increased running to and fro of men and goods, the multiplication of transportation agencies, and their wonderful efficiency. The feeble, crude, and inefficient agencies of his time, the wonderment of his generation, would only excite the laughing curiosity of the children of to-day with their on-the-water and under-the-water craft, and their on-the-earth, under-the-earth, and above-the-earth vehicles of transportation, horseless and steamless.

And the end of progress is not yet. We can no more predict to-day what instrumentalities of transportation and communication will be in common use fifty years hence, than could the learned Justice Nisbet foresee in 1847 what we are using to-day.

The importance and necessity of governmental regulation of public service agencies, therefore, grows with the passing of the years, the march of progress, and the increase of population.

As for ourselves, we are quite confident that the use of the motor vehicle as a public agency of transportation is as yet in its infancy. We do not believe that the small and ill-adapted motor cars now being used in urban public service, such as the so-called jitneys, can permanently succeed, or satisfactorily meet what seems to be a widespread public demand for speedy, economical transportation facilities. We entertain no doubt but that this apparent demand will soon be met by improved, better adapted, safer, and more substantial instrumentalities than now in use. Motor-car transportation, in our opinion, has come to stay, and hence all the more, the necessity for regulation. Proper and reasonable regulation does not mean, nor should it be exercised, for prohibitory or strangulation purposes.

These public servants, like their competitors, the steam and street railroad companies, are entitled to fair treatment, to reasonable fares, and sane regulation. Observation by members of the Commission of the operation of "jitneys" in Atlanta, and of their practices, has convinced us that supervision and regulation are essential to the public safety and welfare, and believing under the act of 1907 that it is made our duty to exercise supervision over the conduct of their business, we shall do so, and from time to time prescribe such just and reasonable regulations as seem to us demanded.

In doing this, it is neither our desire nor purpose to interfere with or supersede the police powers of local authorities, or their powers or duties in reference to license or other forms of taxation.

Note.—In connection with the foregoing opinion in which the Georgia Commission held that it had authority to exercise general supervision over business of all common carriers of passengers including those engaged in operation of automobiles and autobusses or other motor cars upon regular schedules, or over definite routes or between definite points of termini, the Commission issued a copy of rules and regulations which it had under consideration and fixed the date of the hearing thereof on July 13, 1915. The publication of these rules and regulations will be postponed until they have been definitely adopted by the Commission.

ILLINOIS PUBLIC UTILITIES COMMISSION.

JACKSONVILLE RAILWAY COMPANY

v.

L. F. O'DONNELL Doing Business as The Motor Transportation Company.

[No. 3736.]

Public utilities — Jitneys as common carriers.

The owner of a number of automobiles who advertises in various newspapers and through printed circulars that he is engaged in the business of transporting passengers by motor busses over and along certain designated streets in a city, and has specified in such advertising the routes to be taken by his motor busses, the rates of fare to be charged, and a time schedule, and who has held himself out to the public as a common carrier for hire, offering to transport all persons desiring to ride along the routes taken by his motor busses, is a common carrier of persons, and, consequently, a public utility within the meaning of the public utilities act, and must procure a certificate of public convenience and necessity in order to conduct such business.

[June 3, 1915.]

COMPLAINT by a Railroad Company that the respondent who was operating jitneys was doing business as a common carrier without having procured a certificate of public convenience and necessity. Respondent ordered to cease and desist from carrying on such business until he shall have applied for and obtained a certificate of public convenience and necessity required to transact such business.

The appearances are set out in the opinion.

By the **Commission**: This cause came on to be heard upon the complaint filed by the Jacksonville Railway Company, in which W. B. Miser afterwards joined; and upon the answer of the defendant, L. F. O'Donnell, to said complaint, the complainants appearing upon the hearing by Messrs. Green and Palmer, their attorneys, and the defendant appearing by T. J. Condon, Esq., his attorney.

It appears from the evidence that the defendant, L. F. O'Donnell, is the owner of a number of automobiles, which since about the 28th day of March, 1915, he has used for the transportation of persons for hire from and to points within the city of Jacksonville in this state, and that under the name of Motor Transpor-

tation Company he has been furnishing what is commonly known at a jitney-bus service.

It further appears that the respondent has advertised in various newspapers and through printed circulars that he is engaged in the business of transporting passengers by motor busses over and along certain designated streets in the city of Jacksonville, and in such advertising has specified the routes to be taken by his motor busses, the rates of fare to be charged, and a time schedule, and that the respondent has held himself out to the public as a common carrier for hire, and offered to transport all persons desiring to ride along the routes taken by his said motor buses.

From the evidence in this case, the Commission finds that the respondent owns, controls, operates, and manages within this state for public use, a number of automobiles which he is using for the transportation of persons for hire between points within this state, and that in the conduct of such business the respondent is a common carrier of persons, and is a public utility within the meaning of the act entitled, "An Act to Provide for the Regulation of Public Utilities," approved June 30, 1913, and that as such public utility the respondent is subject to the provisions of said act.

The Commission further finds that said respondent was not engaged in such business, nor engaged in performing any public service of that character within this state prior to the 28th day of March, 1915, and that the said respondent has not obtained from this Commission a certificate of public convenience and necessity required for the transaction of such business.

It is therefore *ordered* that the said respondent, L. F. O'Donnell, cease and desist from carrying on the business which he is carrying on in the manner aforesaid, of transporting persons for hire between points within this state, until he shall have applied for and obtained from this Commission a certificate that public convenience and necessity require the transaction of such business.

By order of the Commission this 3d day of June, 1915, dated at Springfield, Illinois.

ILLINOIS PUBLIC UTILITIES COMMISSION.

J. W. NEWCOMB et al.

v.

YELLOW CAB COMPANY.

[No. 4122.]

Public utilities — Taxicabs — Certificate of convenience and necessity.

Taxicabs not operating over specified routes under schedule or

---

Note.—In Re People's Motor Bus Co. P.U.R.1918C, 903, March 18, 1918, the Illinois Commission held that a certificate of convenience and necessity should not be granted for the operation of motor busses upon streets parallel with those occupied by a street railway, practically throughout a city, where the existing utility was rendering adequate service at reasonable rates. The Commission stated: "To grant the certificate of convenience and necessity petitioned for in this case would result in duplication of service, and thereby add to the burden of the people, and render the existing utility less able to respond to demands for a higher standard of service. Furthermore, it is a matter of common knowledge that the experiment of motor bus operation in cities of the population of Springfield has not been a success, and the Commission is of the opinion such experiment would prove unsuccessful in Springfield. Commissioner Sterling, dissenting from the majority opinion, said: "The people of every city and community are entitled to the best transportation service it is possible to secure, at such rates of fare as will bring a proper and reasonable return on the investment in the public utility. The street car and the public motor bus are the agencies most employed by the wage earner in getting to and from his work, and by them, with their families, in getting to church, houses of amusement, stores to shop and to other places, in their leisure hours; those who are in more fortunate circumstances having their own automobiles or other means of conveyance."

Note.—Interstate Routes.

The New York Public Service Commission has jurisdiction over an application for a certificate of convenience and necessity to operate line in competition with an existing railroad service, although part of the route to be occupied crosses the state line. Re Engelke (N. Y.) P.U.R.1922C, 71.

between definite points are not public utilities within the meaning of the Public Utilities act, and do not require a certificate of convenience and necessity.

[February 3, 1916.]

COMPLAINT by common carriers of persons that the Yellow Cab Company who was operating taxicabs was doing business without a certificate of convenience and necessity; dismissed.

By the **Commission:** James N. Newcomb and August Schrader filed the complaint herein, stating that they are engaged in the business of common carriers of passengers for hire, on the streets, roads, and highways of the city of Chicago, in the state of Illinois, and that they have filed with this Commission a schedule of rates and charges under which they are rendering service as common carriers. They further state in their complaint that the defendant is a corporation incorporated under the laws of Illinois as the "Yellow Cab Company," and that said corporation is operating within the city of Chicago a great number of taxicabs for hire, and that said corporation has not applied for nor obtained a certificate of convenience and necessity from this Commission.

The complainants further aver that by the act of the legislature of the state of Illinois entitled, "An Act to Provide for the Regulation of Public Utilities," that said corporation should first obtain a certificate of convenience and necessity before engaging in any business of carrying passengers for hire in the city of Chicago.

Complainants further aver that the Yellow Cab Company is a public utility within the meaning and contemplation of said act, and charge that the defendant is operating in violation of the law, and also to the detriment and damage of the complainants. The complainants ask that this Commission cause notice of this complaint to be served upon the Yellow Cab Company, according to law, and ask that upon a hearing of the matters contained in this complaint that this Commission will direct its counsel to commence appropriate action in the circuit court of Cook county to prevent the continued violation of the law, as alleged in their complaint.

The complainants and the defendant appeared before the Commission, and at the hearing an objection was made as to the

sufficiency of the petition or complaint, such objection being in the nature of a demurrer to the complaint. The defendant, by the objections or demurrer, admitted the allegations of the complaint, but denied their sufficiency in law to require an answer on the part of the defendant, and it was agreed between the parties that the case should be argued upon the law as to the sufficiency of the complaint. Oral argument was presented by the counsel for both parties, and subsequently they filed written briefs to support the theories presented by the respective counsel as to the law governing the case.

It is insisted by the complainants that the Yellow Cab Company is a public utility, for the reason that it serves the public for hire, and that the character of the service rendered by the Yellow Cab Company stamps it as a public utility, as defined in the act mentioned. Under the complaint and the objections filed to it the question is directly raised as to whether or not a carrier of passengers for hire, operating generally within the city of Chicago, brings the operation of such vehicle within the meaning of the law relating to public utilities. It is not claimed that the Yellow Cab Company is operating within the city or state between any given points.

Loosely regarded, the Yellow Cab Company might be considered a public utility or a common carrier, but in order that a common carrier may be brought within the terms of the act requiring the regulation of public utilities, there must be something in addition to a public service rendered and a compensation paid therefor. The act itself seems to contemplate that a public utility in the nature of a common carrier of passengers for hire must operate upon a schedule not only of rates or charges for the service, but also between fixed and definite points.

As defined in § 10 of the act, the term "public utility" includes "every corporation, company, association, joint stock company or association, firm, partnership, or individual, their lessees, trustees, or receivers appointed by any court whatsoever (except, however, such public utilities as are or may hereafter be owned or operated by any municipality) that now or hereafter:

"(a) May own, control, operate, or manage, within the state, directly or indirectly for public use, any plant, equipment, or

property used or to be used for or in connection with the transportation of persons or property, or the transmission of telegraph or telephone messages between points within this state; or for the production, storage, transmission, sale, delivery, or furnishing of heat, cold, light, power, electricity, or water; or for the conveyance of oil or gas by pipe lines; or for the storage or warehousing of goods; or for the conduct of the business of a wharfinger; or that

"(b) May own or control any franchise, license, permit, or right to engage in any such business."

In the case of Jacksonville R. Co. v. O'Donnell, which was decided by this Commission and reported in the P. U. R. 1915C, page 853, this Commission held that the language used in the act—"between points within this state"—had a definite meaning, and was to be regarded in determining the question of whether or not the so-called "jitney" service, automobile service, or taxicab service, in the carrying of passengers for hire, should be regarded as service by a public utility under the act. We there held that the fact that the defendant in that case was operating motor buses over and along certain designated streets in the city of Jacksonville, with definite routes, at specified rates of fare and under a time schedule, brought the defendant clearly within the meaning of the act and constituted the business in which he was engaged that of a public utility.

In the case under consideration, however, there is a complete absence of averment that the Yellow Cab Company is operating over specified routes under a specified schedule as to time, or between certain definite points.

The Commission is clearly of the opinion that the complainants in this case fail to show such a state of facts as would justify this Commission, under the law, to assume jurisdiction over the defendant, and that the complainants have failed to state such a case as would warrant this Commission in directing its legal representatives to proceed against the defendant on the ground that it is conducting a business contrary to law. The character of the business, so far as appears from the complaint in this case, is not such as to require the defendant to first obtain a certificate of convenience and necessity from this Commission before engaging in such business.

It is therefore *ordered* by the Commission that the complaint herein be dismissed.

By order of the Commission at Springfield, Illinois. Dated this 3d day of February, 1916.

Note.—Relying upon the authority of Newcomb v. Yellow Cab Co. and Jacksonville R. Co. v. O'Donnell, P.U.R.1915C, 853, certain vehicles were held by the Illinois Commission in Re Hughes, No. 4159, March 10, 1916 (hacks or taxicabs) and in Southern Illinois Light & P. Co. v. Norton, No. 4009, March 10, 1916 (jitneys with no fixed routes, termini, and regular schedules, and often hired by private contract) not to be utilities within the meaning of the Public Utility law, and therefore not to require certificates of convenience and necessity.

In Re Ritter, P.U.R.1922B, 406, the Illinois Commission held that an individual could not operate a bus line under the Illinois statute, which provided that certificates should be granted only to corporations.

Note.—Arizona.

A law providing for the regulation of auto transportation companies by a state Commission and providing a scheme for the grant of privileges, which is fair and equal in its terms, is not unconstitutional as monopolistic, class discriminatory, or partial legislation, although the Commission is empowered to select between two or more applicants for permission to operate over auto stage routes. Haddad v. State, P.U.R.1922B, 124, — Ariz. —, 201 Pac. 847.

The Supreme Court also held that a Commission order regulating individual operators of automobiles is not void, although the statute under which it was issued enlarged the powers granted in a constitutional provision enacted to regulate "public service corporations" within the state and not individuals by that name. It was further held that a statute giving a state Commission complete jurisdiction over the operation of auto stages and forbidding operating without Commission sanction was not unconstitutional, as a violation of the provision that "no person shall be deprived of life, liberty, or property without due process of law."

It was also held that a Commission order compelling all rent service car owners operating for hire between the termini of a stage line to exact fares for passenger transportation of the prescribed rate of 140 per cent of the stage line fare, did not violate a constitutional provision that all charges for service rendered by public service corporations should be just and reasonable and nondiscriminatory.

ILLINOIS PUBLIC UTILITIES COMMISSION.

RE AUTO TRANSPORTATION COMPANY.

[No. 8296.]

Automobiles — Certificate of convenience — Free highways.

The Illinois Commission will not issue a certificate of convenience and necessity for the operation of motor vehicles, to one applicant, which would thus secure to such applicant any exclusive right to operate in a given territory over the public highways of the state outside the territory of any organized city, village, or incorporated town, since the public highways of the state are free to any and all persons who may desire to avail themselves of the use thereof for transportation purposes.

(DEMPCY, Chairman, dissents.)

[February 5, 1919.]

APPLICATION for a certificate of convenience and necessity; denied.

By the **Commission**: The application filed herein, as amended, sets forth that the petitioner, the Auto Transportation Company, is a corporation organized under the laws of the state of Illinois for the purpose of operating motor trucks for the transportation of passengers, express, and freight between the city of Peoria and the city of Lacon, Illinois, and intermediate points. The petitioner asks that a certificate of convenience and necessity be issued by the Commission authorizing it to engage in said business.

A hearing was held in this case at Springfield on July 30, 1918. John F. Sweeney, secretary of the Auto Transportation Company, appeared for the petitioner; J. A. Knowlton, attorney, appeared on behalf of the Peoria Railway Company, objector.

It appears from the evidence that the petitioner is a recently organized Illinois corporation, and that it proposes to engage in the business of transporting passengers, express, and freight by means of motor trucks or motor vehicles between Peoria and Lacon, Illinois, and intermediate points.

The city of Peoria is located upon the west bank of the Illinois river, and is the county seat of Peoria county. Lacon is located

on the east bank of said Illinois river, about 20 miles north of Peoria, and is the county seat of Marshall county.

The petitioner proposes to operate from the down-town district in the city of Peoria in a northerly direction to the city limits, thence north over a public highway that parallels the Illinois river to and through the villages of Mossville and Rome and the cities of Chillicothe and Sparland, thence in an easterly direction over the Illinois river to the city of Lacon. The proposed route of the petitioner from the down-town district in Peoria to the northern city limits parallels the Adams street car line of the Peoria Railway Company for a distance of about 5 miles, and the Peoria Railway Company objects to the petitioner being authorized to carry passengers over this route between points within the city of Peoria. The petitioner, however, disclaims any intention or desire of hauling passengers locally or between points in said city of Peoria or the suburbs thereof, but expresses the intention of receiving in the city of Peoria only such passengers as may desire transportation on petitioner's line to points north of Peoria.

The evidence shows that there is considerable demand for the service that the petitioner proposes to furnish. However, before granting a certificate of convenience and necessity in this case, the Commission must first determine whether it should create a monopoly in transportation for hire along a public highway established and maintained at public expense, where the only capital invested by the utility is in conveyances often and more commonly used for purposes other than as a public utility.

In the consideration of this question, it should be borne in mind that the theory of state regulation of public utilities is opposed to regulation by competition. Generally speaking, public utilities are considered as natural monopolies and are regulated as such. The question then arises as to whether motor vehicle transportation for hire in a given territory should be treated as a natural monopoly. The character and features of this business are such that, in the opinion of the Commission, it cannot reasonably authorize a monoply where the plant used is largely the property of the public itself. The granting of a certificate of convenience and necessity carries with it a certain implied right of monopoly. Should such a certificate be granted then to one company to the possible exclusion of all others, for operation of

motor vehicles for transportation purposes over the public highway in a given territory? The legislature has not yet directed what authority shall grant the right to the use of a public highway for purposes other than public travel.

The state of Illinois has recently voted favorably upon a proposed bond issue of $60,000,000, the proceeds of said bonds to be used exclusively in the construction and maintenance of a system of hard roads; it being provided that these bonds and the interest thereon shall be paid out of the fees collected for the issuance of motor vehicle licenses. The state is, therefore, about to engage in the construction of a network of highways which are to connect the principal cities of the state. The construction of these roads will undoubtedly give impetus to the movement, now in its infancy, of transporting persons and property by means of motor vehicles.

In the opinion of the Commission the public highways of the state are free to any and all persons who may desire to avail themselves of the use thereof for transportation purposes. After mature consideration this Commission is of the opinion that it should not issue a certificate of convenience and necessity to operate motor vehicles, to one applicant, which would thus secure to such applicant any exclusive right to operate in a given territory over the public highways of the state, outside the territory of any organized city, village, or incorporated town. The conclusion of the Commission is that it will be the policy of the Commission not to grant certificates of convenience and necessity on applications of this character.

Nothing herein contained shall be held conclusive of the right of the Commission to pass on the merits of any application where the intention is to operate as a public utility any transportation system for the conveyance of passengers or merchandise within the limits of any organized city, village, or incorporated town, or where any license, franchise, or permit is required from any municipality as a condition precedent to the use of the public streets or ways of such municipality by such utility.

It is therefore *ordered* that the application of the Auto Transportation Company for a certificate of convenience and necessity be, and the same is hereby, denied.

Dempcy, Chairman, dissenting: I dissent from the order of the majority in this case. The Auto Transportation Company, a corporation, organized under the laws of the state of Illinois for the purpose of operating motor trucks for the transportation of passengers, express, and freight, between the city of Peoria, the county seat of Peoria county, located on the west bank of the Illinois river, and the city of Lacon, the county seat of the county of Marshall, located 20 miles north of Peoria, on the east side of the Illinois river, and intermediate points, filed a petition with the Commission for an order granting a certificate of convenience and necessity to carry out the purposes of its incorporation. It proposes to operate motor trucks or motor vehicles for the transportation of passengers, express, and freight from the down-town district in Peoria (but not to take on or deliver passengers, express, or freight for delivery within the limits of Peoria) in a northerly direction to the city limits; thence north on a public highway that parallels the Illinois river, to and through the villages of Mossville, Rome, Chillicothe, and Sparland; thence in an easterly direction across the Illinois river to the city of Lacon.

The evidence shows there is considerable demand for the service the petitioner proposes to furnish, due in part to the fact that many persons living in Peoria and Lacon, in the summer time, for recreation, fishing, etc., travel to and from these termini to the intermediate towns, some of which are summer resorts.

It is true the proposed route of the petitioner parallels the Rock Island Railroad, but the schedule of that railroad does not furnish convenient service for that portion of the public which petitioner contemplates serving, and the Rock Island Railroad Company did not object to the granting of a certificate of convenience and necessity to the petitioner.

The Public Utilities Act, in § 10 thereof, defines the term "public utility" as follows: "The term 'public utility,' when used in this act, means and includes every corporation, company, association, joint stock company or association, firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever (except, however, such public utilities as are or may hereafter be owned or operated by any municipality) that now or hereafter: (a) May own, control, operate or

manage, within the state, directly or indirectly for public use, any plant, equipment or property used or to be used for or in connection with the transportation of persons or property . . . between points within this state: . . ." [Laws 1913, p. 465.]

The petition specifies fixed termini and route, and is therefore clearly within the definition of a public utility under the Public Utilities Act, as above quoted.

Section 55 of the Public Utilities Act provides:

"No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facilities or in extension thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction.

"No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this state at the time this act goes into effect shall transact any business in this state until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

"Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto it shall have the power to issue certificates of public convenience and necessity.

"Such certificates may be altered or modified by the Commission, upon its own motion or upon application by the person or corporation affected. Unless exercised within a period of two years from the grant thereof authority conferred by a certificate of convenience and necessity issued by the Commission shall be null and void." [Laws 1913, p. 488.]

In the cases decided by the Commission up to this time, the Commission has held that the business of transporting persons or property between fixed termini and over a specified route or routes within the state is within the jurisdiction of the Commission, and requires a certificate of convenience and necessity. It has further been held that taxicabs and other motor vehicles

not operating between fixed termini and over specified routes are not public utilities, and are not within the jurisdiction of the Commission.

In Re Chicago Motor Bus Co. No. 2190, 2 Ill. P. U. C. 694, on December 31, 1914, the Commission, upon the application of the Chicago Motor Bus Company, granted said company a certificate of convenience and necessity to operate lines of motor omnibuses on regular schedules through the park system and over the streets and boulevards in the city of Chicago.

In Jacksonville R. Co. v. O'Donnell, No. 3736 (Ill.) P.U.R. 1915C, 853, on June 3, 1915, the Commission, upon complaint of the Jacksonville Railway Company, held that the respondent, O'Donnell, was engaged in the operation of a public utility because he was operating motor busses over and along certain designated streets and highways in the city of Jacksonville with definite routes at specified rates of fare and under a fixed time schedule; that the operation of motor vehicles under these conditions brought the defendant clearly within the definition of a public utility as defined in § 10 of the Public Utilities Act.

In Re Womac Exp. Co. No. 4081, 2 Ill. P. U. C. 694, on September 22, 1915, the Commission, upon the application of the Womac Express Company, granted said company a certificate of convenience and necessity to operate a transfer and delivery or express business by means of animal or motor power between Womac, Centralia, and Central City.

In Newcomb v. Yellow Cab Co. No. 4122, 3 Ill. P. U. C. 69, on February 3, 1916, the Commission held that the taxicabs of the respondent company, which the Commission found were not being operated over a specified route, nor between definite points, nor upon a time schedule, were not public utilities, and that no certificate of convenience and necessity was required for their operation.

In the case of Tri-City R. Co. v. Dietz, No. 3971, 3 Ill. P. U. C. 72, on April 20, 1916, the Commission, upon complaint of the Tri-City Railway Company, held that John Dietz et al., who were operating motor vehicles in and between the cities of Rock Island, Moline, and East Moline, and the villages of Milan and Silvis, in Rock Island county, were public utilities. The Commission's decision was based upon the fact that the re-

spondents were operating automobiles and so-called jitney busses over fixed routes between definite points in and between the above-mentioned cities and villages.

In the case of Quincy R. Co. v. Snyder, Nos. 4105 and 4105–, 3 Ill. P. U. C. 76, on May 11, 1916, the Commission, upon complaint of the Quincy Railroad Company, held that the respondents were public utilities. In its decision the Commission followed its ruling in the Jacksonville and Rock Island cases, supra, and held that the operation of motor busses or automobiles over and along definite routes between fixed points within the city of Quincy brought the respondents within the jurisdiction of the Commission, and that the conduct of such business was unlawful until a certificate of convenience and necessity should first be obtained.

In Chicago, W. & W. H. Transp. Co. No. 7673 (File G–456), on January 28, 1918, the Commission, upon the application of the Chicago, Waukegan, & West Hammond Transportation Company, held that said company was a public utility, and granted it a certificate of convenience and necessity to transact the business "of transporting freight and express matter by means of motor vehicles to be operated on regular schedules in and between terminal stations in the cities of Chicago and Waukegan, in this state, with such intermediate stations as may be hereafter established."

In Re Chicago Stage Co. No. 6642 (not yet published), on January 8, 1918, the Commission, upon the application of the Chicago Stage Company, and against the opposition of the Chicago Motor Bus Company, granted a certificate of convenience and necessity to the Chicago Stage Company, authorizing it to operate motor busses upon a designated route over the streets and boulevards and through the park systems on the south side of the city of Chicago.

The cases above referred to embrace two classes: First, where a public utility applied to the Commission for a certificate of convenience and necessity to operate motor busses or motor vehicles for the transportation of persons, express, or freight, or any or all of these, and it appeared from the application, supported by sufficient evidence, that the applicant proposed to operate between fixed termini and over designated route; that

the transaction of such business would promote the public convenience and was necessary thereto and the Commission so found, an order was entered granting to such public utility a certificate of convenience and necessity as provided in said § 55; second, where a public utility, organized and operating prior to the taking effect of the Public Utilities Act, or, if subsequent thereto, under a certificate of convenience and necessity granted by the Commission, complained to the Commission that some other public utility, not organized nor operating prior to the taking effect of the Public Utilities Act and without having first obtained a certificate of convenience and necessity from the Commission, was engaged in the business of transporting persons, express, or freight, or any or all of these, between fixed termini over certain route or routes in direct competition with the complainant, where such complaint was supported by sufficient evidence, the Commission entered an order directing the public utility so unlawfully operating to cease and desist from such operation and the conducting of such business unless and until it should have first applied for and obtained from the Public Utilities Commission a certificate of convenience and necessity; and in case of a violation of said order the same was brought to the attention of the attorney general, with the request by the Commission that he take appropriate action to enforce the law.

The course pursued by the Commission in all these cases referred to was, in my opinion, proper, regular, and lawful.

The order of the majority in the instant case is a departure from the Commission's precedents herein cited and from the law applicable to the case. The denial of a certificate in this case is not upon the merits, although it appears from the order of the majority that the applicant, the Auto Transportation Company, is a public utility within the meaning of the provisions of § 10 of the Public Utilities Act, as shown by the application and evidence of said company. The views and position of the majority are pretty clearly indicated in two paragraphs of the order as follows:

"In the opinion of the Commission the public highways of the state are free to any and all persons who may desire to avail themselves of the use thereof for transportation purposes. After mature consideration this Commission is of the opinion

that it should not issue a certificate of convenience and necessity to operate motor vehicles, to one applicant, which would thus secure to such applicant any exclusive right to operate in a given territory over the public highways of the state, outside the territory of any organized city, village, or incorporated town. The conclusion of the Commission is that it will be the policy of the Commission not to grant certificates of convenience and necessity on applications of this character.

"Nothing herein contained shall be held conclusive of the right of the Commission to pass on the merits of any application where the intention is to operate as a public utility any transportation system for the conveyance of passengers or merchandise within the limits of any organized city, village, or incorporated town, or where any license, franchise, or permit is required from any municipality as a condition precedent to the use of the public streets or ways of such municipality by such proposed utility."

In this it appears to me the Commission is placed in the attitude of having adopted a policy which is contrary to the policy of the legislature as evinced by §§ 10 and 55 of the Public Utilities Act. As I understand the law, it is that when a corporation is organized for purposes which enable it to "own, control, operate, or manage within the state, directly or indirectly for public use, any plant, equipment, or property used or to be used for or in connection with the transportation of persons or property . . . between points within this state . . . , it is a public utility; and when it files with the Public Utilities Commission a petition for a certificate of convenience and necessity containing the requisite allegations to bring it within the terms of said § 10, it is the plain duty of the Commission to consider said petition on the merits in view of the provisions of said § 55; and if said petition is so supported by evidence as to enable the Commission to find that the operation proposed will serve the public convenience and is necessary thereto, there is nothing the Commission may lawfully do but grant the certificate.

By what authority the Commission may adopt now and for the future the policy of refraining from granting certificates of convenience and necessity to public utilities, such as motor busses

or motor vehicles for the transportation of persons, express, or freight, or any or all of these, on the public highways in the state outside of organized cities, villages, and incorporated towns, and to grant such certificates to like corporations to operate motor busses or motor vehicles for the transportation of persons, express, or freight, or any or all of these, in organized cities, villages, and incorporated towns, I am unable to see. To dismiss the petition in this case upon the sole ground that to grant the same does not square with this newly announced policy of the Commission is, in my opinion, to dismiss the case arbitrarily. If the Commission may do this, it may pass upon such applications through whim or caprice.

I do not agree with the majority that it is the certificate of convenience and necessity granted by the Commission that makes a corporation a "public utility." On the contrary, a corporation which is not a public utility under said § 10 has no standing before the Commission upon an application for a certificate of convenience and necessity. The Commission deals with public utilities, and cannot change the public utility status of a corporation to that of a nonpublic utility status by denying it a certificate of convenience and necessity; nor can it change the nonpublic utility status of a corporation to a public utility status by granting it such certificate. Whether a corporation is a public utility or not is to be determined by its powers and purposes as shown by its charter or certificate of incorporation, in the light of said § 10.

The policy of the law governing the Commission is fixed by the legislature in the Public Utilities Act, and I find no warrant in that act for ingrafting thereon a policy of the Commission that in the future it will grant certificates of convenience and necessity for motor bus or motor vehicle operation upon the highways of the state in organized cities, villages, and incorporated towns only. There is nothing in the Public Utilities Act to suggest such a distinction or classification; and in dealing with such applications, to make such a distinction or classification is to assume the functions of the legislature, which this Commission has no power to do.

ILLINOIS SUPREME COURT.

STATE PUBLIC UTILITIES COMMISSION

v.

BARTONVILLE BUS LINE.

[No. 13003.]

(125 N. E. 373.)

Automobiles — Certificate of convenience.

The Illinois Commission cannot deny a bus line a certificate of

---

Note.—Ordinances.

Before the courts will interfere with the exercise of legislative power granted to a city to license and regulate motor vehicles, it must appear that the attempted exercise of such power is flagrantly unjust, unreasonable, or oppressive. Desser v. Wichita (1915) 96 Kan. 820, L.R.A.1916D, 246, 153 Pac. 1194.

So, the courts will not hold a jitney ordinance unreasonable in fixing minimum route distances, a maximum fare of 5 cents for a certain distance and an additional 5 cents for further distance, by testimony merely that the cost of operation prior to the ordinance was from 4½ cents to 10 cents per mile, and that operation over the ordinance distances would involve a loss. Philadelphia Jitney Asso. v. Blankenburg (Pa. Dist. Ct.) No. 2382, Nov. 4, 1915.

These ordinances are not invalid as class legislation merely because they impose regulations upon operators of jitney busses not required of taxicabs, street railways, or other vehicles. Thielke v. Albee (1915) — Or. —, 153 Pac. 793; Cummins v. Jones (1916) — Or. —, 155 Pac. 171; Huston v. Des Moines (1916) — Iowa, —, 156 N. W. 882. (P.U.R.1916D, 7.)

A city ordinance requiring operators of jitney busses to secure a license to pay a license fee varying from $75 to $150 according to the seating capacity, and to furnish a $5,000 indemnity bond, when like requirements are not imposed upon operators of taxicabs, sight-seeing vehicles, and hotel busses, is not invalid upon the ground that it violates the constitutional provision that all taxation shall be uniform upon the same class of subjects, and that it unlawfully discriminates against persons operating jitneys. Hazelton v. Atlanta (1916) — Ga. —, 87 S. E. 1043. (P.U.R.1916D, 7.) It was also held that an ordinance requiring operators of jitneys to furnish a $5,000 indemnity bond was not void upon the ground that it was unreasonable and oppressive.

public convenience and necessity which it would otherwise be entitled to on the theory that this would authorize a monopoly, and that a monopoly ought not to be authorized to operate motor vehicles over the public highways of the state outside of the corporate limits of a city or village.

Public utilities — Definition.

Definition of the term "public utility," p. 311.

[December 17, 1919.]

APPEAL from Circuit Court, Sangamon County, E. S. Smith, Judge, directing that the Commission consider and pass on the merits of an application by the Bartonville Bus Line for a certificate of public convenience and necessity which had been denied by the Public Utilities Commission; affirmed.

Appearances: Edward J. Brundage, Atty. Gen., Albert D. Rodenberg, of Springfield, William E. Trautmann, of E. St. Louis, and Matthew Mills and Morton T. Culver, both of Chicago, for appellant; Tichenor, Todd, Wilson & Barnett, of Peoria, for appellee.

Thompson, J.: This is an appeal from a judgment of the circuit court of Sangamon county setting aside a decision of the Public Utilities Commission.

Appellee, the Bartonville Bus Line, filed its application with the Public Utilities Commission for a certificate of convenience and necessity. It sought to operate a motorbus line upon and along certain public streets and highways between a point in the village of Bartonville and a point in the city of Peoria. The Commission refused the certificate on the ground that the granting of the certificate carried with it a certain implied right of monopoly, and that the character and features of the business of appellee are such that to grant it the certificate would be, in effect, authorizing a monopoly where the plant used was largely the property of the public itself. This decision of the Commission is based upon its conclusion that no certificate of convenience and necessity ought to be granted to a public utility where it is proposed to operate motor vehicles over the public highways of the state outside the corporate limits of a city or village.

The term "public utility" means and includes every corpora-

tion that now or hereafter may own, control, operate, or manage within the state, directly or indirectly for public use, any plant, equipment, or property used or to be used for or in connection with the transportation of persons between points within this state. Public Utilities Act, § 10 (Laws 1913, p. 459). No public utility can now begin business in this state until it has obtained a certificate from the Public Utilities Commission that public convenience and necessity require the transaction of such business. Public Utilities Act, § 55. When a public utility files with the Commission a petition for such a certificate, it is the plain duty of the Commission to consider the petition on its merits, and if said petition is so supported by evidence as to enable the Commission to find that the operation proposed will serve the public convenience and is necessary thereto, there is nothing the Commission may lawfully do but grant the certificate. There is nothing in the act which authorizes the Commission to arbitrarily deny the certificate because a portion of the route over which the utility proposes to operate is a highway outside the corporate limits of a city or village. If that is to be the public policy of the state, that policy must be declared by the legislature. The Public Utilities Commission is given no arbitrary powers by statute, and its orders and decisions are subject to review and must be reasonable and lawful. Chicago Bus Co. v. Chicago Stage Co. 287 Ill. 320, P.U.R.1919D, 157, 122 N. E. 477; Public Utilities Commission v. Chicago, M. & St. P. R. Co. 287 Ill. 412, P.U.R.1919D, 315, 122 N. E. 803.

Judging from the conclusion reached by the Commission and the reasoning used by it in reaching the conclusion, we must hold that its decision is unreasonable, and therefore unlawful.

The judgment of the circuit court directing that the Commission consider and pass upon the merits of the application of the Bartonville Bus Line for a certificate of convenience and necessity and for authority to issue its capital stock is therefore affirmed.

Judgment affirmed.

MARYLAND PUBLIC SERVICE COMMISSION.

RE WILLIAM L. DEAN.

[Case No. 1773, Order No. 5563.]

Monopoly and competition — Protection of occupied territory.

1. The Maryland Commission has adopted the policy that when a public utility is rendering to the public a service reasonably adequate, intelligently and economically operated, that utility will be permitted to earn a fair return on the property dedicated to the public service after the payment of operating expenses, taxes, and a reasonable allowance for depreciation, provided such return can be secured through rates not above the value of the service and the utility will be protected against unnecessary, undue, and indiscriminate competition.

Monopoly and competition — Automobiles — Occupied territory.

2. The Maryland Commission granted a permit for the operation of an automobile as a common carrier between two designated points, notwithstanding another automobile was being operated there, where the applicant already had a contract for carrying the United States mail between the two points and the occupant of the territory was not in a position to render adequate service without a further investment which would necessarily increase the rates to be charged.

[April 23, 1920.]

APPLICATION for permit to operate motor vehicles; granted.

Appearances: V. Calvin Trice, counsel for applicant; A. Stengle Marine, counsel for Major Calona Slacum, protestant.

Legg, Commissioner: This case is an application made on November 3d, 1919, by William L. Dean for the granting of a permit by this Commission for the operation of a motor vehicle for public use in the transportation of passengers between Cam-

---

Note.—The Illinois Commission will grant a certificate of convenience and necessity and authority to operate a motor vehicle transportation company to operate over the same route served by an existing operator when it appears that the public will be greatly convenienced and that necessity exists for such service. Re Farina's Bus Line & Transp. Co. P.U.R.1922B, 803.

In Re Chicago Motor Bus Co. Nos. 6066, 6642, Jan. 20, 1920, a certificate of public convenience for the operation of a motor bus line on certain streets in the city of Chicago granted to the Chicago Stage Company was denied to the Chicago Motor Bus Company. (P.U.R.1921C, 635.)

bridge and Hurlock, Maryland, a distance of approximately 17 miles. The application was referred to the transportation expert of the Commission, which official, in his report No. 859, rendered the Commission on January 13, 1920, declined to recommend the granting of the permit applied for, with the following comment:

"This route is at present covered by Mr. Lonic Slacum and his last year's permit was renewed at the beginning of the year.

"My reasons for withholding recommendation of this permit are, that so far as we are aware the service rendered by Mr. Slacum has been satisfactory, and the issuing of another permit would seem an excess of service, which is not in line with the policy of the Commission in cases of this kind."

Counsel for the applicant petitioned the Commission for a hearing upon the application, and a hearing was held in the court house at Cambridge on March 18, 1920.

Hurlock is a junction of the Baltimore, Chesapeake & Atlantic Railway, running from Claiborne to Ocean City, Maryland, connecting at Claiborne with steamer plying between that point and Baltimore, with the Cambridge branch of the Philadelphia, Baltimore & Washington Railroad. The passenger train service between Cambridge and Hurlock is infrequent, and consequently persons traveling between Cambridge and points reached by or via the Baltimore, Chesapeake & Atlantic Railway, including Baltimore, find it convenient to avail themselves of the public automobile service between Cambridge and Hurlock.

Prior to the passage of Chapters 610 and 714 of the Acts of 1916 (§§ 189 to 200, inclusive, of Article 56 of Bagby's Annotated Code) requiring owners of motor vehicles to be used in the public transportation of persons or property first to secure permits from this Commission, and empowering the Commission to grant such permits where such action is "deemed best for the public welfare and convenience" and to refuse the granting of such permits where the granting thereof is deemed "prejudicial to the welfare and convenience of the public," no restrictions were placed upon the number of motor vehicles which might be operated in the public use between any points. During this period of unrestricted competition, Hurlock Brothers, conducting an automobile hiring and garage business in Hurlock,

carried passengers by automobile between Hurlock and Cambridge, and after the enactment of the legislation above referred to, applied for and secured permits from this Commission for the operation of motor vehicle for public use between these points for the years 1917 and 1918, though the authority granted by the permit in the latter year was not exercised. This firm continued, however, to operate without permit from this Commission until a short time prior to the hearing of the present case. During this earlier period Major Calona Slacum, known in the community and referred to in the record as "Lonie" Slacum, conducting a garage and automobile hiring business in Cambridge, also carried passengers between Cambridge and Hurlock, in connection with the transportation of the United States mail, the contract for which he held, thus placing Mr. Slacum in competition with Hurlock Brothers for the passenger traffic between these points. In June, 1918, Mr. Slacum made application for a permit authorizing him to operate over this route, which permit was granted, and renewed for the years 1919 and 1920, covering the operation of one car with capacity of seven passengers.

About November 1, 1919, the applicant in this case, also engaged in the automobile hiring and garage business in Cambridge, obtained the contract to carry mail between Cambridge and Hurlock. Mr. Dean uses a seven passenger automobile for the carriage of the mail, and as the mail does not ordinarily require the entire capacity of the automobile, he used the available space in his automobile for the public transportation of passengers between these points.

[1] The Commission has adopted a well-known and defined policy in its regulation of public utilities, which, stated briefly, is, that when a public utility, either corporate or individual, is rendering to the public a service reasonably adequate, intelligently and economically operated, the Commission permits such utility to earn a fair return on the property dedicated to the public service, after the payment of operating expenses, taxes, and a reasonable allowance for depreciation, provided such return can be secured through rates which are no more than the service is reasonably worth to the public, and in view of such limited return on its investment, the utility is protected against unnecessary, undue, and indiscriminate competition.

[2] Experience has shown that this policy is sound and the public interest is best served through its general application. However, it would be prejudicial to the public interest to apply a fixed rule in every instance, and the case before us is such as to warrant a determination of the matter upon all of its attendant factors.

Motor bus routes are usually established as a result of some known constant demand for service, generally from commuters between termini. The evidence in this case, however, shows that wholly different conditions exist. Travel between Hurlock and Cambridge is much heavier in the fall, winter, and spring months, with the greatest traffic on Friday and Saturday. But it is almost wholly of a transient character, with the continuity of its volume subjected to varying conditions of weather and of railroad and steamship schedules, etc.

Though uncertain in volume, the service requires a seating capacity for at least twelve passengers at all times, in order to provide for the possible demand. The medium of transportation used is a seven passenger enclosed automobile, and both Mr. Slacum and Mr. Dean were operating such type of cars, leaving Cambridge in the morning to meet a westbound train arriving at Hurlock about 8:45 A. M., and again in the evening to meet a southbound train arriving at Hurlock at about 7:45 P. M. The rate of fare charged is now 75 cents a single trip.

It is an established fact that two automobiles of the type now used are essential for the public convenience, even though at times there is not sufficient patronage to load to capacity even one car. Should the Commission adhere to its general policy, and allow Mr. Slacum the exclusive right to carry passengers over this route, he would be required to operate daily two cars. It is obvious that this would result in increased operating costs for him, and, in consequence, a higher rate of fare would be inevitable.

Should we deny Mr. Dean the privilege of carrying passengers in connection with his mail service, the public would be denied the use of transportation regularly available, and this Commission would be faced with the responsibility of forcing the riding public to patronize another carrier at probably increased rates, while facilities now available are denied them.

Such an enforced excess service could not be justified and the economic loss would be unpardonable. It is, therefore, the opinion of the Commission that the best interests of the public will be served by authorizing Mr. Dean to carry passengers in connection with his mail service, and it accordingly will enter its order approving the granting of the permit applied for in the application now on file.

Pursuant to the conclusions reached in the aforegoing opinion, it is, this 23rd day of April, in the year nineteen hundred and twenty, by the Public Service Commission of Maryland,

Ordered: That the application of William L. Dean in this case exhibited be, and the same is hereby granted, and that the permit applied for be issued.

James C. Legg, and J. Frank Harper, Commissioners.

MARYLAND COURT OF APPEALS.

ALBERT G. TOWERS et al.

v.

CHARLES WILDASON.

[No. 81.]

(— Md. —, 109 Atl. 471.)

Public utilities — What constitutes — Automobiles — Public use.

The owner of an automobile who entered into an arrangement with five other men employed at the same place, to carry them for a fixed compensation between their homes and places of work, is not a common carrier required by the Maryland statute to secure a permit from the Commission, where the use of the car was limited to the transportation of the persons mentioned and the public generally was excluded from its use.

[January 16, 1920.]

APPEAL from a decree of the Circuit Court dismissing the complaint of the Public Service Commission for an injunction to restrain the defendant from operating a motor vehicle for hire; affirmed.

Appearances: Wm. Cabell Bruce, of Baltimore (James J.

Archer of Bel Air, on the brief), for appellants; Harry S. Carver, of Bel Air, for appellee.

Thomas, J.: This appeal is from a decree of the circuit court for Hartford county dismissing the bill of complaint of the Public Service Commission of Maryland for an injunction against Charles Wildason to restrain him "from operating one or more motor vehicles in the public transportation of passengers for hire from the town of Bel Air, in Harford county, . . . to the town of Aberdeen, in said county, . . . or from the said town of Aberdeen . . . to the said town of Bel Air, . . . or over any state, state-aid or improved county road, . . . without first having secured a permit so to do from the Public Service Commission of Maryland, as required by law."

The bill charged that the defendant was "operating a motor vehicle owned by him in the public transportation to and from of passengers for hire over the state road between the town of Bel Air," in Harford county, and the town of Aberdeen in said county, "without having secured a permit from the Public Service Commission of Maryland to operate over said road," and was filed under the authority conferred upon the Public Service Commission by § 28 of the Act of 1910, chapter 180.

The answer of the defendant denied that he was a "common carrier," as defined in the bill of complaint, and alleged that at the time of the filing of the bill he was the "owner of a hiring car and paid the regular hiring license for said car to the automobile commissioner of the state of Maryland, authorizing him to hire said car to any person or persons desiring to hire the same;" that at the time the bill was filed he was employed at the "Proving Ground at Aberdeen, . . . and five other men were employed at the same place, and, desiring to leave the town of Bel Air early in order to get to their places of employment in time, they hired the car" referred to "from the defendant, and paid him for the same," each person contributing his proportionate part of the hiring charge; that said parties "went back and forth each day with" the defendant; that the defendant "during all of said time hauled no one else except the five men referred to;" that "at times he had the opportunity of hauling others, even of his own relatives, but refused to do so;" that "he never

stopped anywhere to take on or discharge any of the occupants of said car between Bel Air and the destination at the Proving Ground at Aberdeen;" that since the bill in this case was filed the defendant has been engaged in other business, and has not operated his car between Bel Air and Aberdeen for some time.

The evidence shows that prior to June, 1918, the defendant, who lived just outside of Bel Air, and was employed by the Maryland Dredging Company near Aberdeen, and Harry Lingan, John E. Calder, Hall Calder, Harry R. Cale, and William E. Dolan, who lived in or near Bel Air, and were employed at the Aberdeen Proving Ground, in going to and returning from Aberdeen had been using a bus line then in operation between Bel Air and Aberdeen, and at Aberdeen they took a train that carried them to their places of employment; that the bus frequently got to Aberdeen too late to enable them to catch their train, and was sometimes so crowded that they could not get a seat; that in June, 1918, the defendant, in order to avoid the delays and loss and inconvenience incident to the use of the bus line, purchased a five-passenger Overland car, took out a "hiring license," for which he paid about $23, and entered into an arrangement with Harry Lingan and the others named by which he took them in his car to the place of their employment in the morning and brought them back in the evening for a definite compensation per week; that the route they took from Bel Air to Aberdeen was over the state road; that the defendant never at any time took any one with him except the five persons named, with whom he made said arrangement, and if one of them remained at home he took no one else in his place and his seat remained vacant; and that after the bill of complaint in this case was filed he ceased to operate his car and sold it.

It is conceded that the defendant did not secure from the Public Service Commission a permit to operate the car, and the bill was filed upon the theory that the use he made of his car brought him within the provisions of § 1 of chapter 610 of the Act of 1916, as amended by chapter 199 of the Act of 1918 (§ 189 of art. 56, vol. 4, of the Code), which provides that "it shall be the duty of each owner of a motor vehicle to be used in the public transportation of passengers for hire operating over state, state aid, improved county roads, and streets and roads of in-

corporated towns and cities in the state of Maryland to secure a permit from the Public Service Commission of Maryland to operate over said roads and streets, and present same to the motor vehicle commissioner annually at the time and according to the method and provisions prescribed by law for owners of all other motor vehicles, to make an application in writing for registration with the Commissioner of motor vehicles, and to state in said application besides the other matters by law provided, the seating capacity for passengers of said motor vehicle, the route on which said motor vehicle is to be used, whether reserve or substitute cars are maintained by the applicant to be used only in emergencies, and if so, the number of such reserve and substitute cars and a complete description of each, and when in use same to be designated by a special marker to be furnished by the commissioner of motor vehicles, the length of route in miles on state, state aid, improved county roads, and streets and roads of incorporated towns and cities, respectively, in the state of Maryland, the weight of the vehicle, and the schedule under which it shall operate during the ensuing year, and for all such motor vehicles, except reserve or substitute vehicles, the following annual fees shall be paid to the commissioner of motor vehicles for certificates of registration issued by him, and no other additional fees, license, or tax, shall be charged by the state or any municipal subdivision thereof except the regular property tax in respect to such vehicles or their operation."

This section also creates there classes of "such" motor vehicles, and provides that those in class A, weighing less than 3,000 pounds, shall pay an annual fee of one-twentieth of a cent "per each passenger seat" multiplied by the number of miles to be traveled over said roads during the year for which the certificate shall be issued; that those in class B, weighing over 3,000 and less than 7,000 pounds, shall pay one-fifteenth of a cent for each passenger seat multiplied by the number of miles as stated in class A; and that those in class C, weighing over 7,000 pounds, shall pay a fee of one-sixth of a cent for each passenger seat multiplied by the number of miles as stated in class A.

At the same session the legislature passed the Act of 1916, c. 687, providing for the registration and licensing of all motor vehicles except "motor vehicles engaged in the business of com-

mon carriers." This act, as amended by chapter 85 of the Acts of 1918 (§ 141 of art. 56, vol. 4, of the Code), under the title "Fees for Registration of Motor Vehicles," divides motor vehicles into classes A, B, C, D, E, F, G, and H, and class F is as follows:

"One dollar and twenty cents per horse power or fraction thereof in the case of all motor vehicles operating for the purpose of transporting persons for hire upon any of the public highways of this state other than motor vehicles operating on fixed schedules, the registration fees of which are fixed by other specific provisions of law, and provided that said charge shall be in lieu of all other taxes, fees or charges of every kind upon said motor vehicles or upon the receipts of those operating the same except the taxes imposed upon the same as personal property."

These two Acts of 1916 were before this court in the case of Smith v. State, 130 Md. 482, 100 Atl. 778, and in reference to them Judge Stockbridge, speaking for the court, said:

"The legislature of 1916 passed two acts to regulate the licensing of automobiles. Both were approved by the Governor upon the same date. Of these chapter 687 was in the nature of a general act, relating to all vehicles operated by a power other than muscular, using the highways and roads of this state.

"The terms of this act were of a most sweeping character, the only exemption from its provisions being in the case 'of motor vehicles engaged in the business of common carriers or placing such in a special class for regulation in other respects.'

"The other act was chapter 610, and was an act to regulate license fees and the operation of motor vehicles to be used in the public transportation of passengers for hire. It was distinctly an act relating to the licensing of motor vehicles used as common carriers. The rate of license required and the mode of determining it differed in the two acts. In chapter 610, because of its dealing with such vehicles as common carriers, there was the prerequisite required of a permit from the Public Service Commission of the state, and its assent to operate over a certain route and upon a named schedule. . . .

"The intent of the legislative enactment is perfectly clear. What that body was attempting to do was to distinguish as be-

tween motor vehicles operated as common carriers, and those not regularly so operated; the former would be subject to the provisions of chapter 610; the latter governed by the provisions of chapter 687."

With this construction of the two Acts of 1916, it is apparent that, unless the use the defendant made of his car brought him within the definition of a "common carrier," he was not subject to the provisions of chapter 610. Chapter 180 of the Acts of 1910 (§ 413 of article 23 of the Code of 1912) declares that the term "common carrier" shall include all railroad corporations, etc., "and all persons and associations of persons, . . . operating such agencies for public use in the conveyance of persons or property within this state," and § 1½ of chapter 445 of the Act of 1914 (§ 413a of art. 23, vol. 3 of the Code) provides that "the term 'common carrier' . . . shall likewise include all automobile transportation companies, and all persons and associations of persons, whether incorporated or not, operating automobiles or motor cars, or motor vehicles, for public use in the conveyance of persons or property within this state."

It is clear from the evidence in the case that the use that the defendant made of his car did not constitute him a "common carrier" as that term is defined by the statutes referred to. He did not operate his car "for public use," but only for his use and the use of the five men we have named. The evidence is clear and undisputed that he never carried anybody from Bel Air to Aberdeen, or from Aberdeen to Bel Air, except the five men named in his testimony, and that the public were excluded from the use of his car. It is suggested by the learned counsel for the appellants that there is no need in this case to turn to the common-law definition of the words "common carrier," nor to the definition contained in the Act of 1914 referred to, and that chapter 610 of the Acts of 1916 contains the only definition having any direct or specific application to the question. But this suggestion loses sight of the fact that the bill in this case was filed under the authority conferred upon the Public Service Commission by § 28 of the Acts of 1910, c. 180, which authorizes the Commission to institute such proceedings when the Commission shall be of the opinion "that a common carrier . . . is failing or omitting, or about to fail or omit to do anything required of

it by law, . . . or is doing anything, or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of law," etc. Unless, therefore, the defendant was a "common carrier," as defined by that act, and by § 1½ of chapter 445 of the Acts of 1914, the bill in this case was not authorized by § 28 of chapter 180 of the Acts of 1910.

It follows from what we have said that the decree of the court below must be affirmed.

Decree affirmed, with costs.

Note.—Arizona.

The Arizona Commission, in Re Van Buren Street, Informal Docket No. 186, March 28, 1916, issued an order directing that all stage-line cars should approach electric and steam railway crossings under full control, and not at not to exceed 4 miles per hour, it appearing that a collision occurred by reason of the excessive speed at which a stage car was being operated. (P.U.R.1916D, 6.)

In Re Cactus Garage Sales Co. Docket No. 1284–A–446, Decision No. 1265, April 7, 1921, the Arizona Commission granted a certificate of convenience and necessity to a company proposing to operate a bus line in competition with a similar line already established between a large city and a popular park 1½ miles distant therefrom. The Commission said: "The conditions herein however, are not parallel to those existing between towns or distances separated by a considerable distance and since it is clearly shown that there is no likelihood of competition reducing the earnings of the present operator to an unprofitable basis it is evidence that no injustice will result therefrom. Paved roads will certainly result in a material reduction in operating expenses and it is our opinion that there is ample business for two lines to operate on a reasonable profit to both. (P.U.R.1921C, 719.)

The Arizona Commission held in Re Turner, P.U.R.1922B, 760, that the installation of a new public utility into occupied territory, should be refused unless the new utility offered the same or better service than the existing corporation or offered a somewhat similar service at a reduced cost to the public.

In Re Staggs, P.U.R.1922B, 763, the same Commission granted a certificate of convenience and necessity to the operator of a truck equipped to handle both passengers and freight, but unable to care for shipments of heavy freight without inconvenience to passengers, and provided in such certificate that the rights and privileges granted therein should not operate to restrict or curtail the operations of transfer companies which had been handling heavy traffic over the same route.

MARYLAND PUBLIC SERVICE COMMISSION.

RE REGULATION OF AUTOMOBILES AND JITNEY BUSSES OPERATING AS COMMON CARRIERS IN MARYLAND.

[Case No. 939, Order No. 6329.]

Automobiles — Rules and Regulations.

Rules for the regulation of automobiles and jitney busses operating as common carriers in the state of Maryland.

[June 15, 1921.]

FORMAL ORDER.

By the Commission: Whereas, this Commission, by its Order No. 3022 entered in the above entitled case on September 14th, 1916, repealed and revoked its rules and regulations governing the operation of public motor vehicles, as theretofore established by Order No. 2356 entered therein on June 9th, 1915, and, by its said Order No. 3022, established other rules and regulations for the regulation and control of all automobile transportation, and all persons and associations of persons, whether incorporated or not, operating automobiles or motor cars, or motor vehicles, for public use in the conveyance of persons and property within the state to become effective October 1st, 1916, and to continue in force unless and until revoked or amended by further order of the Commission; and

Whereas, the rules and regulations as thus established were from time to time supplemented and amended by further orders of the Commission in the premises, entered, respectively, on October 6th, 1916, and May 4th, 1920; and

Whereas, the rules and regulations so established, supplemented and amended are inadequate, by reason of the facts that the conditions to which they owe their origin have changed materially since their establishment and promulgation, and that various shortcomings in the practical operation of such rules and regulations have been developed by the administrative experience of the Commission:

It is therefore, this 15th day of June, in the year Nineteen Hundred and Twenty-One by the Public Service Commission of Maryland,

Ordered: First: That the rules and regulations governing the operation of public motor vehicles as set forth in Order No. 3022, entered September 14th, 1916, as supplemented and amended, shall cease to be effective on and after July 1, 1921;

Second: That the following rules and regulations are hereby adopted to govern the control and operation of certain motor vehicles used in the public transportation for hire of persons and property, as hereinafter further provided and more fully set forth, to become effective July 1, 1921, and to continue in force unless and until revoked or amended by further order of the Commission:

Rules and Regulations Governing the Control and Operation of Certain Motor Vehicles Engaged in the Public Transportation of Persons or Property for Hire.

1. *Applicability.*

Except as otherwise provided in Rule 9 hereof, the following rules and regulations, hereinafter called rules shall apply, so far as reasonably applicable in each instance to all motor vehicles of every kind used in the public transportation of passengers for hire, or in the public transportation of merchandise or freight for hire, operating on fixed schedules and regular or established routes, over state or state-aid roads, improved county roads, or streets and roads of incorporated towns and cities in the state of Maryland.

2. *Necessity for Permit.*

Except as otherwise provided in Rule 17 hereof, no motor vehicle shall be operated in this state hereafter for the purposes, in the manner, and over the roads and streets described in Rule 1 hereof, until the owner or person or persons, association, or corporation lawfully in possession thereof shall first have applied for and received a permit from the Public Service Commission of Maryland authorizing such operation. Such permits may be issued by the Commission at any time during the year, and for such length of time as the Commission may deem best for the public welfare and convenience. Unless otherwise specified in any permit, the right to operate thereunder shall terminate on the 31st day of December next succeeding the date of

issue, but permits may be renewed from year to year upon surrender of that issued for the year preceding. Permits shall not be transferable. No charge shall be made for the issue of any permit under the provisions of these rules.

3. *Applications for Permits.*

All original applications for permits issuable under Rule 2 shall be made upon blank forms prescribed by the Commission, and shall be signed by the applicant. At the time of making such application the applicant shall be given a printed copy of these rules, unless he previously has received a copy, and shall be required to certify in his application that he has received and read these rules and agrees to comply with the provisions thereof. A complete schedule of proposed operation shall accompany and be filed with the application. Any duty imposed by these rules upon applicants may, if the applicant be a corporation, be performed on behalf of such applicant by a duly authorized agent. If the ownership or lawful right to possession of the motor vehicle for which a permit is desired is vested in two or more persons, any one of them may apply for such permit under the provisions of these rules.

4. *Form of Permit.*

The permits above authorized to be issued shall be in such form as from time to time may be prescribed by the Commission, but in all instances shall contain the Public Service Commission's permit number, the name and address of the person or persons, association, or corporation to whom or to which issued, the carrying capacity as fixed by the Public Service Commission in the case of a motor vehicle engaged in the public transportation of passengers, the carrying capacity as given by the manufacturer of such motor vehicle in the case of a motor vehicle engaged in the public transportation of merchandise or freight, and the schedule and route on which the same is authorized to operate. The grantee or grantees of any permit shall notify the Commission promptly of any change of address occurring after such issuance of permit.

5. *Display of Permit.*

Permits shall be carried at all times in or on the motor vehi-

cle for which issued, and shall be displayed by the operator thereof at any time upon the demand of the proper representatives of the Public Service Commission, commissioner of motor vehicles, or police authorities of the state, or any municipal subdivision thereof. Permits issued under the provisions of these rules for the operation of motor vehicles for the public transportation of passengers for hire shall be displayed publicly at all times in a conspicuous place in the motor vehicles for which issued.

6. *Established Route.*

No motor vehicle to which these rules are applicable, for which a permit has been issued, shall be operated for hire over any route other than that prescribed therein, without the express consent of the Commission, unless it happen that such route be blocked or otherwise rendered temporarily impassible. Operation over part only of the regular or established route shall be deemed to be operation over a route other than that authorized in the permit, within the meaning of this rule. No motor vehicle to which these rules are applicable shall be operated for compensation within the limits of the city of Baltimore, otherwise than for the purposes, in the manner, and over the roads and streets described in Rule 1 hereof, and as by its permit authorized.

7. *Destination Signs.*

All motor vehicles to which these rules are applicable shall be equipped with legible signs on each side, or if specifically authorized or prescribed by the Commission, on the front thereof, indicating the respective termini of their routes, or the name of the street, road, or other public highway forming the greater part of such route.

8. *Fixed Schedules.*

No motor vehicle to which these rules are applicable shall be operated on any schedule other than that authorized in its permit, nor shall the time of leaving any of the principal points on its route be varied except in emergency cases, without the express consent of the Public Service Commission.

9. *Hiring Cars.*

For the purposes of these rules, any motor vehicle used in the public transportation of passengers for hire, or in the public

transportation of merchandise or freight for hire otherwise than on fixed schedules, over regular or established routes, shall be deemed to be a hiring car. No hiring car shall be operated along or over any route established by the Commission as a regular route by the issuance of a permit to any person or persons, association, or corporation, or over any substantial part thereof, except as it may be necessary to traverse the same as an incident to its ordinary hiring business, and no operator or person in charge of a hiring car shall solicit patrons or business at either of the termini of any such established route, or at any point along the same, with the intent of carrying patrons or property over any established route or substantially similar route.

10. *Rates of Fare.*

The owner or person or persons, association, or corporation lawfully in possession of a motor vehicle to which these rules are applicable, shall file with the Commission, and shall print and keep open to public inspection, schedules showing the rates, fares, and charges exacted for transportation of persons and property within the state for the purposes, in the manner, and over the roads and streets described in Rule 1 hereof, which for the purposes of these rules shall be designated tariff schedules. No operator of any such motor vehicle shall make any charge other than or different from those filed as above provided. The person or persons, association, or corporation to whom or to which a permit is issued for the public transportation of passengers for hire shall cause to be posted conspicuously in the motor vehicle, the operation of which is thereby authorized, a copy of such tariff schedule or tariff schedules.

11. *Traveling in Opposite Direction from Destination.*

Any person boarding a motor vehicle to which these rules are applicable, engaged in the public transportation of passengers for hire, when such vehicle is bound in the direction opposite from his destination, shall be charged the regular and fixed fare for carriage to the terminus or other point where such vehicle begins its trip in the direction of such destination.

12. *Changes in Routes, Schedules or Tariffs.*

In all cases where persons, associations, or corporations to

whom or to which permits have been issued as aforesaid desire to make any change in routing or schedules, formal application shall be made to the Public Service Commission for permission and authority to do so. But no change of route or schedule shall become effective until a copy thereof has been sent to the Commissioner of Motor Vehicles of Maryland, and an adjustment of charges made as by law provided. Subject to the same proviso, the Public Service Commission reserves the right to arrange or rearrange routes and schedules so as to prevent competition injurious to the public welfare or prevent unnecessary congestion on streets and highways. Changes in tariff schedules may be made only pursuant to the provisions of § 15 of the Public Service Commission Law relative to changes in tariffs by common carriers.

13. *Permissible Carrying Capacity.*

The maximum permissible carrying capacity of motor vehicles engaged in the transportation of passengers for hire, to which these rules are applicable, shall be determined by dividing the total length of seats in inches by 16 this formula being based upon an allowance of 16 inches per passenger, and the resulting figure not holding where the aggregate weight of such passengers on the basis aforesaid would exceed the carrying capacity of the chassis.

The maximum permissible carrying capacity of such motor vehicle as determined by the Public Service Commission shall be designated on its permit issued as aforesaid.

Illustration.

Total length seats	128	140	160	176	192	208	224	240
Pounds capacity	1120	1260	1400	1540	1680	1820	1960	2150
Number passengers ...	8	9	10	11	12	13	14	15

14. *Loading.*

No motor vehicle engaged in transporting passengers for hire, to which these rules are applicable, shall be permitted by its operator to carry a greater number of passengers under any circumstances than the number specified in the permit issued by the Public Service Commission for the operation thereof.

Not more than one person in addition to the driver shall be permitted to occupy the front seat of any motor vehicle of the type known as the left hand drive engaged in the public trans-

portation of passengers for hire, to which these rules are applicable, if the gear shift is located on the right hand side of the driver; and not more than one person, in addition to the driver, for each 16 inches of width of the front seat, allowing 16 inches for the driver, if the gear shift is located on the left hand side of the driver; nor shall more than one person in addition to the driver be permitted to occupy the front seat of any motor vehicle of the type known as right hand drive engaged in the public transportation of passengers for hire, to which these rules are applicable, where the gear shift is located on the left hand side of the driver; and not more than one person in addition to the driver, for each 16 inches of width of front seat, allowing 16 inches for the driver where the gear shift is located on the right hand side of the driver.

No passenger shall be permitted to ride upon the steps of the running board of any motor vehicle engaged is the public transportation of passengers for hire, to which these rules are applicable.

15. *Loading—Continued.*

No person shall be permitted to ride upon the top of any motor vehicle engaged in the public transportation of passengers for hire, to which these rules are applicable, unless such top has been designed and constructed for such use, and is properly provided with seats and protecting railings.

16. *Accidents.*

Immediate notice shall be given the Public Service Commission of all accidents in which motor vehicles engaged in public transportation, to which these rules are applicable, are involved, where such accidents result in loss of life or injury to property carried, or where the same result in equipment damage sufficient to necessitate the removal of the motor vehicle from service for a period of more than twenty-four hours.

17. *Substitute Motor Vehicles.*

Whenever by reason of accident, disablement, or breakdown of any motor vehicle to which these rules are applicable, operation thereof pursuant to the schedule filed with the Commission and in compliance with the conditions prescribed by these rules is impossible, it shall be the duty of the owner or person or per-

sons, association or corporation lawfully in possession thereof to make arrangements for making available a substitute motor vehicle to take the place thereof, in order that the schedule may be maintained. Such substitute motor vehicle shall be fully subject in all respects to the provisions of these rules in so far as the same are reasonably applicable. If a hiring car be used as such substitute motor vehicle the license tag of the disabled, or otherwise incapacitated, car shall be attached beside the hiring license on such substitute car. If the capacity of the substitute car be greater than that of the car regularly used, for which a permit has been issued under the provisions of these rules, a greater number of passengers or a greater weight in freight shall not be carried than that authorized in such permit for such regularly used car.

18. *Interruptions to Service.*

In all cases of interruptions to the regular service of motor vehicles, to which these rules are applicable, where such interruptions have continued or are likely to continue over a period at more than twenty-four hours, written notice shall be given the Commission of the character, cause, and probable duration of the same, and of the arrangements made or in progress for making available a substitute car as provided in Rule 17 hereof.

19. *Withdrawals from Service.*

It shall be unlawful for any person or persons, association or corporation engaged in the operation of one or more motor vehicles to which these rules are applicable, to withdraw the same from public service permanently without having first given the Public Service Commission at least ten days' notice in writing of his, their or its intention to do so.

20. *Reserve Equipment.*

It shall be the duty of the owner or person or persons, association or corporation lawfully in possession of motor vehicles to which these rules are applicable to maintain sufficient reserve equipment to insure the reasonable maintenance of the routes established, and schedules fixed therefor.

21. *Physical Condition.*

Before a motor vehicle for which a permit has been issued

under the provisions of these rules shall be placed in operation, inspection thereof shall be made, whenever practicable, by a representative of the Commission. Applicants for permits shall be informed at the time of making application whether such preliminary inspection will be required. All motor vehicles engaged in public transportation and the equipment used in connection therewith shall at all times be kept in proper physical condition to render safe and adequate and proper public service, and so as not to be a menace to the safety of occupants of such vehicles, or of the general public. Failure to keep such motor vehicles in the condition aforesaid shall be sufficient ground for the revocation or suspension of such permit.

22. *Reckless or Unsafe Operation.*

No operator of any motor vehicle to which these rules are applicable shall operate the same recklessly, in an unsafe manner, or in disregard of the public general laws governing the operation of motor vehicles in this state. A persistent or flagrant violation of this rule or of duly prescribed street traffic regulations shall be sufficient ground for revocation or suspension of permit.

23. *Inspection.*

Representatives of the Public Service Commission authorized to make inspections under the provisions of these rules will be provided with appropriate badges for identification. They shall have the right at any time to enter into or upon any motor vehicle to which these rules are applicable for the purpose of ascertaining whether or not the same have been violated. Wilful refusal of the operator of any such motor vehicle to stop the same when ordered to do so by any such representative of the Commission, or to permit any such representative to enter into or upon the same for the purposes aforesaid or to display the permit issued for such motor vehicle upon his demand shall be sufficient ground for the revocation or suspension of such permit.

24. *Revocation or Suspension of Permit.*

No permit issued by the Public Service Service Commission pursuant to these rules, except as hereinafter provided, shall be revoked until after hearing had upon not less than five days' written notice to the grantee or grantees thereof, and an oppor-

tunity given him or them or it to be heard in his, their or its defense. Notice of such hearing shall be in writing and shall be served in person upon such grantee, or one of them, if there be more than one, or proper agent for service, if the grantee be a corporation or mailed by registered mail at the address given in the application, or changed address subsequently filed with the Commission, which mailing, after a reasonable time for delivery according to due course of mail, shall be as effective and binding as personal service. No such permit shall be suspended until after hearing had before the Commission or its proper representative upon not less than three days' written notice served or mailed in the manner provided herein for the case of proposed revocation of permit. No person or persons, association, or corporation shall operate any motor vehicle to which these rules are applicable for the purposes, in the manner, and over the roads and streets described in Rule 1 hereof after the revocation of the permit issued therefor, or during the period of its suspension. In addition to the causes expressly specified in these rules as grounds for revocation or suspension of permits, the flagrant or persistent violation of any of these rules, or failure to secure from the commissioner of motor vehicles, within thirty days after the issue of a permit under the provisions of these rules, a license for operation pursuant to such permit, shall be sufficient ground, in the discretion of the Commission, for the revocation of a permit. The requirement for notice and hearing herein contained shall not extend to revocation of permit for failure to secure such license from the commissioner of motor vehicles within thirty days after issuance of permit, as above.

25. *Annual Reports.*

It shall be the duty of the owner or person or persons, association, or corporation, lawfully in possession of any motor vehicle or line of motor vehicles to which these rules are applicable to keep an accurate record of receipts from operation and of operating and other expenses and to file the same with the Public Service Commission on or before the 1st day of April in each year, as of the 31st day of the preceding December on forms prescribed and furnished by the Commission.

26. *Violations.*

Any person who is the owner of any motor vehicle to which these rules are applicable, who shall cause or permit or suffer to be caused or permitted the violation of any of the foregoing rules or the operation of such motor vehicle contrary to the requirements thereof, shall himself be deemed guilty of a violation of the same as fully as though he were himself operating such motor vehicle personally at the time; and in the case of a corporation, the officer, agent or employee thereof who shall violate, or procure, aid or abet any violation of any of these rules or permit the operation of any motor vehicle contrary to the requirements thereof shall be deemed personally guilty of a violation thereof. For the purposes of these rules, the word "owner" shall be deemed to include the possessor of a proprietary interest.

27. *Penalties.*

The penalties for the violation of any of the foregoing rules in addition to the penalties prescribed by Section 28 of the Public Service Commission Law for failure, omission or neglect to obey, observe or comply with any direction or requirement of the Commission, and to the possible revocation of permits as heretofore provided, shall be those prescribed in Section 5 of Chapter 610 and Section 5 of Chapter 714 of the Acts of 1916, to wit: The person violating the same shall be deemed guilty of a misdemeanor, and upon conviction shall be subject to a fine of not less than five dollars ($5.00) nor more than fifty dollars ($50.00) for the first offense, and a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) for each additional or subsequent offense.

And it is further *ordered:* That on or before the 25th day of June, 1921, the secretary of the Commission cause to be forwarded a copy of this order to every person, association, or corporation shown by the records of the Commission on that date to be engaged in the operation of a motor vehicle or motor vehicles for public use in the conveyance of persons or property within this state.

William M. Maloy, J. Frank Harper, and Ezra B. Whitman, Commissioners.

MASSACHUSETTS PUBLIC SERVICE COMMISSION.

RE MIDDLESEX & BOSTON STREET RAILWAY COMPANY.

[P. S. C. 2261.]

Service — Street railway — Strike — Operation of motor busses.
A street railway company was authorized to acquire motor

Note.—Rules and Regulations. (Maryland.)

Order regulating automobiles and jitney busses operating as common carriers. [Re Regulation & Control of Automobiles (Md.) P.U.R.1915C, 365.]

To operators of public motor vehicles:—

The general assembly in 1914 amended the public service Commission law by providing that the term "common carrier" when used in the law shall include all automobiles, transportation companies, and all persons and associations, whether incorporated or otherwise, operating automobiles or motor cars or motor vehicles for public use in the conveyance of passengers or property within the state of Maryland. By virtue of the power and authority conferred, and in order to carry out the obligations imposed by law,

It is therefore, this 13th day of May, 1915, by the Public Service Commission of Maryland,

Ordered that it shall be illegal for any person or persons, whether incorporated or otherwise, to operate automobiles or motor cars or motor vehicles for public use in the conveyance of passengers or property within the state of Maryland, without first having registered at the office of the Commission and furnishing the additional information required in circular No. 48. (This circular will be mailed upon receipt of the name and address of owner or owners.)

It is further *ordered* that a copy of this order be published in some newspaper published in each county of the state of Maryland once a week for two weeks, and in two newspapers published in Baltimore city, two times a week for two weeks, the last publication to be not later than the 29th day of May, 1915.

It is further *ordered* that the registration and information required by this order shall be filed with the Commission at its office in the Munsey Building, Baltimore, Maryland, not later than the 31st day of May, 1915.

Albert G. Towers, E. Clay Timanus, W. Laird Henry, Commissioners.

Notice.—Section 28 of the Public Service Commission law provides a fine not to exceed $5,000 for each violation of this order, and every day's continuance of such violation shall constitute a separate and distinct offense.

busses for temporary operation for the accommodation of the public, where it was able to run only a few of its cars by reason of a strike of its employees.

[August 31, 1918.]

PETITION for authority to acquire and operate motor vehicles; granted.

By the **Commission**: This petition is brought under the provisions of chapter 226 of the General Acts of 1918, which reads as follows:

Section 1. Any street railway company, with the approval of the Public Service Commission, may acquire, own and operate for the transportation of passengers or freight motor vehicles not running upon rails or tracks.

Section 2. Every person, firm or corporation, including street railway companies, operating any such motor vehicle upon any public street or way for the carriage of passengers for hire in such a manner as to afford a means of transportation similar to that afforded by a street railway, by indiscriminately receiving and discharging passengers along the route on which the vehicle is operated or may be running, is hereby declared to be a common carrier, and shall in respect to the operation of such vehicle be subject to such orders, rules and regulations as have been or may from time to time be prescribed or adopted by the licensing authorities of any city or town which has accepted the provisions of chapter 293 of the General Acts of 1916. Any petitioner, or any street railway company, aggrieved by such orders, rules or regulations, may appeal to the Public Service Commission, whose decision, after notice to said licensing authorities and a hearing thereon if requested by such authorities, shall be final. Such appeal may be taken within thirty days from the time such orders, rules or regulations become effective, or in case the same have already become effective, within thirty days after the passage of this act. All orders, rules or regulations made, established or prescribed hereunder, shall be enforced in the manner provided in § 28 of chapter 784 of the Acts of 1913.

Section 3. In cities or towns that have not accepted the provisions of said chapter 293 wherein a street railway exists, and wherein a line of motor vehicles has been established under the

provisions of § 1 of this act, the Public Service Commission shall have original jurisdiction over persons, firms or corporations mentioned in § 2, and may prescribe rules and regulations until the city or town accepts the provisions of said chapter 293, whereupon original jurisdiction shall vest in the city or town, subject to appeal to the Public Service Commission as provided in § 2.

Section 4. This act shall take effect upon its passage. [Approved May 24, 1918.]

In the present instance the employees of the petitioner, the Middlesex & Boston Street Railway Company, are on strike, and it is able to operate only a very few of its cars, to the great inconvenience of its patrons, especially the workmen who use the railway daily in going to and from their work. The company has no intention of engaging permanently in automobile operation, but believes that it can secure a certain number of motor busses for temporary use, and in this way accommodate some of its patrons whose need for transportation facilities is most urgent. It desires immediate action by the Commission to meet the existing emergency.

We think that the situation is clear, and that there can be little doubt as to the course which the Commission ought to pursue. The public which the Middlesex & Boston Street Railway Company was created to serve is being deprived of transportation facilities, which in many cases are greatly needed. Whatever may be the merits of the controversy with its employees, there is no good reason why the public should be permitted to suffer if in any way this can be avoided. If the company cannot operate street cars, but can, to some extent at least, operate motor busses, in our judgment it ought to be permitted to do so.

It will be noted that the act above quoted does not contain the usual provision for "public notice and a hearing" prior to action by the Commission. Under ordinary circumstances, and if a permanent right to operate motor vehicles were desired, the Commission would consider a public hearing essential, whether or not required by the statute. In the present emergency, however, the value to the public of any action by the Commission is dependent upon the quickness with which it is taken, and no permanent right is desired.

The act also provides that the operation of motor vehicles by a

street railway company shall be subject to such orders, rules, and regulations as may from time to time be prescribed by the licensing authorities of any city or town which has accepted the provisions of chapter 293 of the General Acts of 1916, subject to review by this Commission. Where a city or town in which the vehicles are operated, however, has not accepted this act, the Commission has original jurisdiction in prescribing rules and regulations. In the present case some of the municipalities in which the electric lines of the company are located have accepted the act and some have not. In view of the temporary character of the operation, however, we do not think that it is necessary for the Commission to lay down at this time any definite rules or regulations in those cases where it has original jurisdiction. The inspection department will be directed to keep the operation of the vehicles under observation, and the Commission will be prepared to take such action as may from time to time seem necessary or desirable in the public interest. It is therefore *ordered* that the Middlesex & Boston Street Railway Company is hereby authorized, during the thirty days beginning September 1, 1918, but not thereafter, to acquire, own, and operate for the transportation of passengers, motor vehicles not running upon rails or tracks in the cities and towns in which its railway lines are located and upon the routes which these lines follow, in accordance with the provisions of chapter 226 of the General Acts of 1918.

MASSACHUSETTS PUBLIC SERVICE COMMISSION.

RE UNION STREET RAILWAY COMPANY.

[P. S. C. 2151.]

RE MASSACHUSETTS NORTHEASTERN STREET RAILWAY COMPANY.

[P. S. C. 2158.]

RE NAHANT & LYNN STREET RAILWAY COMPANY.

[P. S. C. 2171.]

RE JUSTIN B. JOHNSON et al.

[P. S. C. 2290.]

RE BAY STATE STREET RAILWAY COMPANY.

[P. S. C. 2182, 2187, 2189, 2191, 2193, 2194, 2197.]

Automobiles — Jitney regulation.

1. Under chapter 226 of the General Acts of Massachusetts of

1918, the Public Service Commission is given broad authority in the exercise of a reasonable discretion to review all local rules and regulations dealing with jitney operation.

Automobiles — Jitney regulation — General and local conditions.

2. The Massachusetts statute with reference to the regulation of jitney operation (General Acts 1918, chap. 226) contemplates that rules and regulations with reference to the operation of such automobiles should, as far as practicable, be established upon a uniform basis; that where the regulations affect the conduct of the business as a whole, irrespective of locality, the determination should rest with the Commission, in case of appeal; but that the determination should remain with the local authorities where involving purely local traffic or conditions.

Automobiles — Jitney competition — Effect on street railway operation.

3. Jitney traffic which takes away a large section of the most profitable central traffic of a street railway without relieving it of a single line of its unprofitable routes tends to destroy the capacity of the street railway system to meet its obligations to render adequate service, and, if continued, must result in the gradual discontinuance of the more unprofitable lines in the outskirts of the city, and in the ultimate bankruptcy of the company.

Monopoly and competition — Jitney and street railway service.

4. As between rival systems of transportation, such as street railways and jitneys, it is reasonable and proper that the one which of itself is best adapted to furnish the form of service suited to urban conditions should survive.

Monopoly and competition — Street railway and jitney service — Which should survive.

5. Jitney service, while it may supplement or destroy that of the street railway, cannot take its place.

Automobiles — Motor-bus operation — Street railway routes.

6. Motor-bus service, if it has any advantages in economy of operation or otherwise, can be furnished most advantageously over existing street railway routes by the street railway companies themselves through the operation of a trackless trolley bus, using the company's present overhead system.

Automobiles — Motor-bus service — Alternative of street railway service.

7. Motor-bus service does not afford a practical alternative for existing street railway facilities.

Monopoly and competition — Jitneys — Street railways — Massachusetts policy.

8. The policy of chapter 226 of the General Acts of Massachusetts of 1918 is to permit jitney competition with street railways, subject to such rules and regulations in regard to operation as are reasonable and proper in the case of a common carrier.

Monopoly and competition — Jitneys and street railways — Equality of competitive conditions.

9. The jitney, if regarded in the terms of the Massachusetts statute (General Acts 1918, chap. 226) as a common carrier affording "a means of transportation similar to that afforded by a street railway," should reasonably enter the competitive field under something like equality of competitive conditions.

Automobiles — Jitney operation — Rules.

10. Rules established for jitney operation should include as a minimum the following requirements: (1) A regular schedule of operation over a specified route, with a stated charge for all passengers; (2) proper regulations in the interest of safety of operation; (3) a bond of sufficient amount.

Automobiles — Jitney operation — Bonds — Amount.

11. The amount of the bond required for the operation of jitney motor cars should be $2,500 for an ordinary car with a five-passenger capacity, and $500 for each additional passenger for which the vehicle is licensed to carry.

Automobiles — Jitney operation — Enforcement of rules.

12. No rules relating to the operation of jitneys can be self-operative, and therefore constant vigilance should be exercised, both by the state and local authorities, to see that rules prescribed are consistently followed and enforced.

[April 3, 1919.]

PETITIONS to review rules and regulations prescribed by certain municipalities with reference to the operation of motor vehicles for the carriage of passengers for hire; rules and regulations prescribed and set forth in detail in the order following the opinion of the Commission.

By the **Commission**: These are petitions requesting the Public Service Commission, in accordance with the provisions of chapter 226 of the General Acts of 1918, to review the orders, rules, and regulations prescribed by the cities of Malden, Lynn, Salem, Lawrence, Haverhill, Newburyport, Brockton, and New Bedford, and the towns of Swampscott and Nahant, with respect to motor vehicles not running on rails or tracks, but operating upon public streets or ways "for the carriage of passengers for hire in such a manner as to afford a means of transportation similar to that afforded by a street railway, by indiscriminately receiving and discharging passengers along the route on which the vehicle is operated." Authority to license and regulate such motor vehicles, commonly known and hereinafter referred to as

jitneys, was given by chapter 293 of the General Acts of 1916, to cities and towns accepting the provisions of that act. Under the 1918 Statute the jitney is expressly declared to be a common carrier, and the local regulations prescribed under the 1916 Statute are made subject to appeal to and review by the Commission. Appeal from the regulations prescribed in the town of Nahant was taken both by the Nahant & Lynn Street Railway Company and by certain local jitney operators, but in all the other petitions the sole appellant is the local street railway company,—the Massachusetts Northeastern Street Railway Company in the city of Newburyport, the Union Street Railway Company in the city of New Bedford, and the Bay State Street Railway Company in the other municipalities.

A brief account of the origin and development of the jitney as a serious competitor of the street railway, together with a *résumé* of the more important state laws and local regulations relating to jitneys which had been adopted in this and other states, is given in the annual report of the Commission for the year 1915 (3 P. S. C. p. cxli.). Since the jitney first emerged into public view in the American cities on the Pacific coast about five years ago, its development as a factor of local transportation has shown many vicissitudes. As the original jitney operators were owners of cheap, second-hand automobiles, who found it difficult to secure employment for themselves or profitable use for their cars during a time of economic depression, jitney operation was regarded merely as a phase of the hard times, which would pass as soon as the jitney owners obtained other regular forms of employment or found necessary repairs too costly to continue operation. So far as the original operators were concerned this proved to a large extent to be true, but as they retired other operators were ready to take their places and to try out the experiment for themselves. As the public also appeared to be eager to avail themselves of the reputed luxury of an automobile ride at a nominal cost of a "jitney," which is the western slang term for a 5-cent coin corresponding to our "nickel," jitney service suddenly sprang up and assumed large dimensions in many of the principal cities throughout the country. This wave, however, soon receded, either because jitney owners found costs too high for

profitable operation, or as the result of state and municipal regulations.

Since this first reaction jitney service in various sections of the country has shown marked fluctuations in volume, alternately increasing and decreasing, for reasons that are not always easy to discover. It has been estimated that the number of jitneys operated in the United States amounted at one time to over 20,000, but statistics gathered by the United States War Board showed that in the latter part of 1918 this number had fallen to 5,799 (see "Area," November, 1918, p. 389). The jitney business reached its greatest development in certain cities like Los Angeles, California, where over 1,000 jitneys were at one time in operation, and Dallas, Texas, where the number was over 350, but in these and other cities of the West and South, where the traffic had reached the largest proportions, comparatively few jitneys are now operated. Until within a comparatively recent period the number of jitneys operated in Massachusetts has been relatively small as compared with other sections of the country.

Last fall, however, according to the statistics of the United States War Board referred to above, there were 993 jitneys operating in Massachusetts, a larger number than in any other single state.

The first step taken in this state to regulate jitney operation was the enactment of chapter 293 of the General Acts of 1916, already referred to, giving to cities and towns accepting the provisions of that act authority to license and regulate the operation of such vehicles. This statute did not prove wholly satisfactory in operation. In the first place, the unregulated operation of jitneys was permitted to continue in cities and towns which failed to accept the act. Moreover, while some of the cities and towns which accepted the act have apparently made a serious attempt to prescribe and enforce reasonably adequate regulations, the jurisdiction given has, for the most part, been exercised in a rather perfunctory manner, and the enforcement of the regulations through proceedings in the criminal court has not proved effective.

[1, 2] Largely as the result of recommendations made last year by the Street Railway Investigation Commission, the 1916 statute was supplemented by the enactment of chapter 226 of

the General Acts of 1918. This statute authorized street railway companies, with the approval of the Public Service Commission, to engage in jitney operation, but no street railway company, so far as we are aware, has availed itself of the authority so granted. The act also provided for an appeal to the Commission from local regulations prescribed under the 1916 Statute. All orders, rules, or regulations so established were also made enforceable under the provisions of § 28 of the Public Service Act (Acts 1913, chap. 784). It was apparently intended that the Commission should have original jurisdiction over jitney operation in cities and towns which had not accepted the provisions of the 1916 Statute; but such jurisdiction, under the language of the act as drawn, is given only in case the street railway company is itself furnishing a jitney service in such cities or towns. In other respects the act is somewhat crudely drawn, as the exact scope of the Commission's authority in case of appeal, and the policy and standards which are to govern the action of the Commission in reviewing local regulations, are not clearly defined. Apparently, however, the Commission is given broad authority, in the exercise of a reasonable discretion, to review all local rules and regulations dealing with jitney operation. It seems obvious, also, that one of the main purposes of this legislation was to provide for a greater uniformity of state policy in the regulation of this form of transportation. It is true that, where the rules and regulations which may properly be prescribed are influenced by purely local traffic or other conditions, the determination of such matters should remain with the local authorities; but where the rules and regulations are reasonably to be regarded as affecting the conduct of the business as a whole, irrespective of the locality, the statute apparently contemplates that the ultimate determination in case of appeal should rest with the Commission, and that such rules and regulations should, so far as practicable, be established upon a uniform basis.

The local regulations adopted in many of the municipalities have been influenced by the fact that a large section of the public are disposed to encourage jitney operation, both because of sympathy for a local enterprise and because it has proved a convenience to the public in supplementing the deficiencies of street railway transportation. If, however, we are to continue the pol-

icy of practically unrestricted jitney operation, which has been followed in most of the cities and towns of the commonwealth, we should do so with a full realization of the natural and logical consequences of such a policy. The whole problem of jitney operation in its relation to local transportation, and in its general economic bearing on the street railway situation, is discussed in a comprehensive way in an able report submitted November 5, 1917, by Dr. Adam Shortt, special commissioner appointed by the provincial government of British Columbia, Canada. Certain extracts from that report in condensed form have been incorporated in the discussion which follows:

[3, 4] In street railway transportation the principle is universally recognized that the greater earning power of the heavier traffic routes must be utilized to help support the outlying routes with lighter traffic. Obviously, if a competitive service such as the jitney comes in, especially during a period of financial depression, and takes away a large section of the most profitable central traffic without relieving the street railway of a single mile of the unprofitable routes, it tends to destroy the capacity of the street railway system to meet its obligations to render adequate service, and if continued must result in the gradual discontinuance of the more unprofitable lines in the outskirts of the city and in the ultimate bankruptcy of the company. Based upon recent experience in this state, it is doubtful if the entire local passenger traffic can adequately support the single transportation service of the street railway companies on any reasonable fare basis; and if potential street railway revenues must be shared with the jitneys, it can only mean that one system or the other must succumb within a comparatively short time, or that both will fail after a period of successive fare increases and of greatly deteriorated service to the public. As between rival systems of transportation it is reasonable and proper that the one which of itself is best adapted to furnish the form of service suited to urban conditions should survive.

If the jitney can furnish a cheaper, more uniform, adequate, reliable, and responsible service than the street railway, and if the latter has become virtually obsolete as an agency of transportation, it would be folly to attempt to stay the tide of progress. No matter what sacrifice of invested capital may be involved, the

street railway must be permitted to go the way of the old stage-coach, and any attempt to prolong its existence would be misdirected charity, and unjustifiable public policy. In that case the only honest course for the public to pursue is to discourage the investment of new capital in the rehabilitation of railway properties which must be scrapped in the near future, and to permit the owners to save what is possible from the wreck of their investments. On the other hand, if a more adequate and dependable service can be furnished by the street railway, and if, as the available evidence indicates, the street railway cannot survive under a policy of unrestricted jitney competition, it is plain that the general public interest demands proper regulation of jitney operation as a condition of retaining the existing transportation service.

[5] We believe that a candid investigation of the conditions of jitney operation wherever it has been tried is bound to lead to the conclusion that, while jitney service may supplement or destroy the street railway, it cannot take its place. Our present street railway systems are the product of years of organization, and represent the investment of millions of capital in forms which are not readily adaptable for other uses. This fact in itself affords a strong guaranty for the performance of their obligations, and the best inducement for furnishing, where possible, an acceptable service to the public, on whose favor the street railway must entirely depend. On the other hand, the jitney operator, with nothing more at stake than a cheap, second-hand automobile, which he can dispose of without substantial loss, or convert to other uses, can abandon the field of jitney operation without material sacrifice when anything better turns up. The great fluctuations in the numbers of such vehicles that are from time to time operated in the same communities is a sufficient indication of the irresponsible character of the business. The idea that the constant demands of city traffic can be wholly met by a group of independent, individual jitney operators furnishing service without any co-ordination or guaranty of reasonable permanence, is a palpable delusion; and no such claim, it is fair to say, has been advanced by any of the jitney operators in the present case.

[6] It is true that the ordinary five-passenger or seven-passen-

ger automobile commonly used heretofore in jitney operation is being gradually supplanted by the large motor bus, and that the latter, when properly closed in, lighted, and heated, is better adapted to the conveyance of passengers at all seasons and at all hours than the jitney of the older type. Busses of this character have been successfully developed in some of the larger European cities, and have been found to perform a useful supplementary service in cities like Chicago and New York, where the density of traffic is such that every available means of transportation must be utilized; or for operation in streets, parks, and driveways, where it would not be desirable to have trolley tracks or wires. If service of this character should, however, be found to have any advantages in economy of operation or otherwise, we believe that it is of no importance whether the motive power be electricity or gasolene, and that service over existing street railway routes could be furnished most advantageously by the street railway companies themselves through the operation of a trackless trolley bus, using the company's present overhead system.

[7] The advent of the motor bus represents a greatly increased menace to street railway operation, and strengthens the conclusion already reached that the two methods of transportation cannot long coexist without disaster to one or both; and whatever claims have been advanced for the motor bus, we do not believe it can be seriously argued that it affords a practical alternative for existing street railway facilities. It is easy, if not especially profitable, to indulge in speculation in regard to future developments in motor transportation, but upon all the evidence now available we must continue to rely on the street railway as the only dependable agency in the field which it occupies. Moreover, if jitney competition were entirely eliminated, there is every reason to believe that the street railway alone would be able to render cheaper and better service than the street railway and the jitney together now furnish to the public.

As we have already pointed out, statistics published in November, 1918, showed that 993 jitneys were then operating in Massachusetts, or more than one sixth of the total number for the entire country. Moreover, statistics compiled by the Bay State Street Railway Company show that during the three months' period from November, 1918, to February, 1919, jitneys operat-

ing in the territory served by that company increased by 34 per cent. If the patrons of these jitneys, based upon the results of an actual traffic count, had used the street railway lines instead, it would have represented during the month of February an additional weekly revenue to the Bay State Company alone of $16,600, or over $860,000 a year. Making the necessary traffic adjustments upon the basis of the results of other fare changes, an increase of 1 cent in every fare zone would be necessary to offset this loss of revenue, or, to put it in other words, if the company were free from this form of competition, it could reduce its city fares to 6 cents and its interurban fares for two or more zones to 4 cents each, and still be as well off as it is to-day. If the number of jitneys operating continues to increase as it has during the last three months for which figures are available, the cost to the street car riders will greatly exceed the figures given, and we will be faced with a complete demoralization of our local transportation facilities. If the public are disposed to encourage jitney competition it is proper for them to realize that they are indulging in an expensive luxury.

The situation is aptly described in a recent article by Mr. Delos F. Wilcox, of New York city: It is a particularly interesting development that now, just as we have come to give legal recognition to the theory of monopoly in public utility service, the practical conditions of monopoly which formerly surrounded the street railway business have been considerably modified. Street railways unquestionably render a necessary service to urban communities. It is also unquestionable that they can be operated more economically and can render better service to the public if the business is handled by a single agency in each separate urban community, but the development of private automobiles and of jitney busses has been so great in recent years as to make serious inroads upon the traffic on which the street railways must depend for their financial support. In other words, just as monopoly has received legal recognition, effective competition has been re-established by a different type of vehicle. The effect of automobile and jitney competition upon the present financial condition of the street railways and upon their financial prospects for the future is profound, and, even from the public point

of view, alarming. National Municipal Review, January, 1919, p. 38.

If the jitney problem has assumed a more acute phase in this state than in any other part of the country, it has doubtless been due, in part, to our local street railway conditions, although Massachusetts has by no means had a monopoly of high fares and poor service. This condition, however, is due mainly to the fact that Massachusetts has not kept pace with the rest of the country in subjecting jitneys to reasonable and proper regulation. It is significant that practically all the states and cities where the volume of jitney business has been largest in the past have found it necessary to adopt stringent regulations which have resulted in decreasing the number of jitneys to a point where their operation no longer constitutes a serious menace to existing transportation agencies or to the public. The 1918 Statute, which has already been briefly described, represents an attempt, in part at least, to bring our policy into line with legislative precedents in other states.

[8] At the hearings held upon these petitions it was urged by counsel for certain of the petitioning street railway companies that the statute should be construed in the light of the accepted state policy of restricted competition amounting to practical monopoly in the operation of essential public utilities; that a street railway company, for instance, cannot invade a field already occupied by another street railway company unless the Commission finds that the construction and operation of this competitive road is required by public convenience and necessity; and that the Commission, in the exercise of similar policy, should prohibit the operation of jitneys if the territory is already reasonably served by existing transportation facilities, or if the jitney competition seemed likely to result in seriously crippling the financial resources of the street railway companies and in making it impossible for them to furnish adequate service. It is true that such a policy is embodied in the statutes regulating the operation of jitneys in California, New York, and other states, and is clearly recognized in the statute relative to the use of trolley motor vehicles in our own state, which expressly provides that approval for the operation of such vehicles shall not be granted "if the Public Service Commission shall be of the

opinion that the granting of the same would be unduly injurious to any street railway or trackless trolley line covering the same or substantially the same territory." General Acts 1916, chap. 266, § 5. We do not believe, however, that the statute now under consideration, in the absence of any express declaration, can reasonably be given such a construction. The policy of the statute appears to be to permit jitney competition subject to such rules and regulations in regard to operation as are reasonable and proper in the case of a common carrier.

[9] If the jitney, however, is to be regarded, in the terms of the statute, as a common carrier affording "a means of transportation similar to that afforded by a street railway," it should reasonably enter the competitive field under something like equality of competitive conditions. In order to furnish transportation under conditions comparable to those of the street railway, it would be necessary for the jitneys at least to comply with the following conditions;

They should furnish regular transportation at as frequent intervals and during as many hours of the day as the street railways, should carry passengers the same distances for the same fares, furnish free transfers to any part of the city on the same basis as the street railways, and provide half fares for school children. They should also, like the street railways, be under direct public supervision and regulation in regard both to the fares charged and the service and facilities rendered.

They should also, in taking the place of the street railway and enjoying the privilege of using the city streets, contribute as much proportionately towards the maintenance of the streets and the payment of state and local taxes.

They should be under equally stringent rules in regard to safety of operation as the street railways, and they should furnish bonds to such an extent as would render claims for damages against their owners as certain of recovery as at present against the street railway companies.

It is clear from the mere statement of these conditions that there is no possibility of such conditions being met by the jitney operators. Many of the burdens and restrictions now imposed upon street railway companies could not as a practical matter, and perhaps should not, be imposed upon the jitney operators,

but within reasonable limitations jitney regulations should be based upon the principle of fair competition. Under conditions now generally prevailing, the jitney, however, is given an unfair advantage over its competitor in the transportation field.

Jitney service in general calls for little or no outlay of new capital, as it usually represents merely a new use for cheap automobiles already owned, partially worn out, frequently mortgaged, and having little sale value. Their owners pay little, either in the form of property or special taxes, there is little supervision with respect to safety of operation, and in case of serious accident, the average jitney owner would be financially unable to pay the damages awarded against him. Street railway companies in general furnish transportation over all lines and on a reasonably frequent headway during eighteen hours of each day and in all kinds of weather. Some trips on all lines and all trips on some lines are operated at a loss, but the obligation to furnish service under such conditions is an incident of their responsibilities as common carriers engaged in the performance of a public service. Jitneys, on the other hand, commonly confine their operation to short-haul, fair-weather business during the rush hours, and over the central, shorter, well-paved, and most profitable routes. In other words, in the absence of adequate regulation, the jitneys are in effect permitted to operate when and how they please, and thus to obtain all the advantages without assuming any of the obligations of a common carrier.

[10] If any reasonable attempt is made to meet the responsibilities of regulation imposed by the statute on local and state authorities, it would seem that the rules established for jitney operation should include as a minimum the following requirements:

1. A regular schedule of operation over a specified route, with a stated charge for all passengers.

2. Proper regulations in the interest of safety of operation.

3. A bond of sufficient amount to meet the requirements of the 1916 Statute.

In our opinion the schedule of operation should provide for a headway of not more than one hour between trips, and should cover a period of service, allowing a reasonable interval for meals, of at least twelve *consecutive* hours daily, between fixed

termini and over a designated route. The designated route should be strictly adhered to and completely covered on each trip, and no change should be made in the schedule of operation, in the route, or in the fares charged, except after reasonable notice to the local authorities.

In regard to safety of operation, it is proper to point out the anomaly in requiring the one-man street car to adhere to strict operating rules in the interest of public safety, and to be equipped with an expensive, automatic stop device and other safety appliances, while the one-man jitney operator under conditions where the hazard is probably greater is, in many cases, permitted to operate any kind of a vehicle in any condition of repair and in any manner he chooses. The rules and regulations which we believe to be reasonable and proper in order to promote greater safety of jitney operation, without imposing undue hardship upon the owners of such vehicles, are set forth in detail in the accompanying order; and, as their purpose is obvious, no discussion of them seems necessary.

The question of the amount of the bond to be filed as security for claims on account of personal injury or property damage was made the subject of extended argument at the hearings by counsel representing the various parties. The bonds required by the local regulations now under review vary from nothing to $10,000 for each vehicle operated. By the terms of the 1916 Statute the amount of the bond or other security should be "in such sum as the city or town may reasonably require, conditioned to pay any final judgment obtained against the principal named in the bond for any injury to person or property, or damage for causing the death of any person by reason of any negligent or unlawful act on the part of the principal named in said bond, his or its agents, employees or drivers in the use or operation of any such vehicle." The language of this provision clearly makes it obligatory on the regulating authorities to fix the bond at a reasonably adequate amount.

[11] Counsel for the companies contended that the bonds prescribed by certain of the municipalities were wholly inadequate in amount, and that the bonds filed in many cases afforded little real security, because the personal sureties upon the bonds approved by the city or town treasurer were not financially respon-

sible. They therefore requested the Commission to fix the amount of the bond in a sum which would be sufficient to indemnify the public in case of serious personal injury or property damage, caused by negligent jitney operation, and that the surety on such bonds should in all cases be a proper surety company. Whatever merit there may be in the latter suggestion, the Commission is not satisfied that it has the authority under the statute to impose any such requirement.

The jitney operators, however, pointed out that it was impossible for them to obtain any bond from a surety company except upon deposit of practically full collateral, and that the requirements of a bond of large amount would result in driving them out of business. While this argument does not appear to be a convincing reason for relieving the jitney operators from any obligation which may reasonably be required in the public interest, we believe that the amount of the bond might wisely be kept as low as is consistent with due regard for public safety and the requirements of the statute.

Just what the amount of such bond should be is largely a question of judgment. After due consideration, we are of the opinion that it is not consistent to require a bond of uniform amount for all vehicles, irrespective of their size, and the number of passengers carried; that the amount of the bond for the ordinary car with a five-passenger capacity should be $2,500; and that the amount of this bond should be increased by $500 for each additional passenger which the vehicle is licensed to carry. An examination of the bond requirements in over a hundred cities in this and other states shows that the amount of the bond which we have prescribed is somewhat lower than the average, and that the requirements for bonds for substantially larger amount have not prevented the operation of a reasonable number of jitneys in other municipalities.

In addition to the regulations prescribed in the accompanying order, the different regulations prescribed by the local authorities in the various cities and towns to meet special local conditions are also approved. Local regulations of this character include the fixing of a reasonable annual license fee and reasonable fines or other penalties for the violation of any of the orders, rules, and regulations, as amended hereby, which are lawfully in

effect in respect to the operation of such vehicles, a determination of the total number of jitneys which shall be licensed, restrictions as to the period of the year within which they are to operate, the particular streets over which they will be permitted to run, or from which they will be excluded, limitations of time and place in regard to the standing of such vehicles in public streets or squares, the points of loading and unloading passengers, the permissible speed of operation, and other traffic rules and ordinances.

[12] Finally, it may be pointed out that no rules prescribed, either by the Commission or by the local authorities, can be self-operative, and that constant vigilance should be exercised both by the state and local authorities to see that the rules prescribed are consistently followed and enforced. We trust that the whole problem will be worked out with the same spirit of co-operation on the part of the municipalities and the various parties in interest that has been heretofore displayed. In the rules and regulations which we have prepared we have endeavored to provide for the greatest amount of convenience and safety to the public, combined with the minimum of burden on the jitney operators. Of course experience may show that certain of these rules and regulations may have to be modified or changed, and the Commission will be glad to entertain applications therefor as occasion may arise after a reasonable trial of the regulations herein prescribed.

ORDER.

It appearing that public hearings upon the said petitions have been duly notified and held, and that a full investigation of the matters and things involved has been had, and that the Commission on the date hereof has filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof; it is

Ordered that the orders, rules, and regulations prescribed or adopted by the licensing authorities in each of the cities of Malden, Lynn, Salem, Lawrence, Haverhill, Newburyport, Brockton, and New Bedford, and in each of the towns of Nahant and Swampscott, in respect to the operation of motor vehicles, except trackless trolley vehicles, so-called, upon any public street

or way for the carriage of passengers for hire in such a manner as to afford a means of transportation similar to that afforded by a street railway, by indiscriminately receiving and discharging passengers along the route on which such vehicles are operated, be hereby amended by the insertion or substitution of the following orders, rules, and regulations, except in so far as the same have already been prescribed or adopted in any of said cities or towns; that all orders, rules, and regulations in conflict therewith which have been adopted or prescribed in any and all of said cities or towns be hereby disapproved, superseded, and annulled; and that all other orders, rules, and regulations in respect to the operation of such motor vehicles which have been prescribed or adopted in any and all of said cities and towns be hereby approved.

1. No person, firm, or corporation shall engage in the business of operating any such motor vehicle within or into any part of any of said cities or towns without first obtaining from the licensing authorities of such city or town a special license for each and every vehicle to be employed by such person, firm, or corporation in said business, and unless such license for such vehicle is in force according to the provisions of and subject to these regulations.

2. Every applicant for a license to operate any such motor vehicle shall file with the city or town clerk a written application, which shall set forth:

(a) The public highway or highways over which, and the fixed termini and the regular route between which and over which, the applicant intends to operate.

(b) A schedule of operation in conformity with ¶ 10 hereof, showing the effective date thereof, the time of arrival and departure from and at all termini, and time of departure from important intermediate points.

(c) A schedule or tariff showing the passenger fares to be charged between the several points or localities to be served.

(d) The seating capacity, according to its trade rating, of each motor vehicle which it is proposed to operate. If the motor vehicle has been adapted for use as a bus, either by converting a freight-carrying truck into a passenger-carrying vehicle, or by reconstructing, modifying, or adding to the body or seating ar-

rangements of a passenger-carrying motor vehicle, a statement of the seating capacity shall be added.

3. Before such license is granted, the vehicle shall be inspected by a competent mechanician designated by the licensing authorities of the city or town, or their authorized representatives; and no license shall be issued until such inspection has been made, and a report rendered as to the strength, seating capacity, and proper equipment of such vehicle for safe and efficient operation. After such license has been granted, a similar inspection and report shall be made at least once every six months. Every such vehicle shall be maintained at all times in a safe and sanitary condition, and shall be at all times subject to the inspection of the licensing authorities or their duly authorized representatives.

4. No person shall drive, operate, or be in charge of any such motor vehicle in any street, way, or public place in any of said cities or towns without first obtaining, in addition to the chauffeur's license issued by the Massachusetts Highway Commission, a special annual chauffeur's license therefor from the licensing authorities of such city or town, and unless both of such licenses are in force. No such special license shall be granted to any person who is under the age of twenty-one years, or who has not demonstrated to the satisfaction of said licensing authorities his ability to drive the vehicle proposed to be operated by him, and his familiarity with the motor-vehicle laws of the commonwealth, with the rules and regulations herein prescribed, and with the street traffic regulations of such city or town, or who has failed to pass such examination as to his qualifications as said licensing authorities may require. No license shall be issued until said licensing authorities or their duly authorized representatives are satisfied that the applicant is a proper person to receive it. Said licensing authorities at the time of issuing said license shall deliver to the licensee a metal badge properly inscribed, which badge shall be worn in a conspicuous place on the outer garment of the licensee at all times when he is driving or in charge of any such motor vehicle in any street or public place; and said licensing authorities shall also deliver to the licensee an identification card, stating thereon the number of the license, the licensee's age, height, weight, color of hair, color of eyes, and the term of the license. No such license shall permit any other person to wear

such badge, nor shall any person wear the badge of any other licensee while driving or in charge of any such motor vehicle while in any street or public place. Said identification card shall be carried by the licensee at all times while operating or in charge of any such motor vehicle in any street or public place. Every person while driving or in charge of any such motor vehicle while in any street or public place shall carry the license for such vehicle, and, at any time when requested by any police officer, he shall show him such license and said identification card.

5. No such motor vehicle shall be used or operated without a printed sign thereon stating the termini of the route, the fare to be charged, and the license number, which sign shall be so printed and attached to the motor vehicle as to be plainly visible to persons on the street, or without a printed sign thereon showing the schedule of service filed and in effect at the time, which sign shall be so printed and attached to the said motor vehicle as to be plainly visible to passengers boarding such motor vehicle.

6. No license for the operation of any such motor vehicle shall be issued or granted for a period exceeding one year, and shall not become operative until the licensee named therein shall deposit with the treasurer of the city or town in which such vehicle is to be operated, security, by bond or otherwise, approved by the city or town treasurer, conditioned to pay any final judgment obtained against the principal named in the bond for any injury to person or property, or damage for causing the death of any person by reason of any negligent or unlawful act on the part of the principal named in said bonds, his or its agents, employees or drivers, in the use or operation of any such vehicle. The security deposited under the provisions of this paragraph shall be in the sum of $2,500 for a motor vehicle having a seating capacity of five persons or less, and for a motor vehicle having a seating capacity of six or more in the sum of $2,500 and $500 additional for each passenger seat in excess of five, provided that any licensee who files with the city or town clerk a certificate from a city or town clerk in any city or town in which said motor vehicle is duly licensed to operate, setting forth that said licensee has filed in said city or town a bond which is in accordance with

the provisions of this paragraph, shall be exempted from filing any further bond.

7. The license issued for the operation of such motor vehicle shall designate the number of passengers, exclusive of the operator, the licensee is authorized to carry in said vehicle; and no person driving or in charge of said vehicle shall take on or suffer or permit any more persons to ride or to be carried thereon at any one time than the number designated in the license, nor permit any person to stand inside, or to stand or sit upon any running board, step, fender, dash or hood thereof, or to permit any person to ride on such motor vehicle outside the body thereof; provided, however, that in addition to the number of passengers which said motor vehicle, by the terms of its license, is permitted to carry, children under seven years of age may be carried therein, in arms, or seated on the laps of parents or adult persons accompanying them, but no passenger with a child in arms or seated on the lap shall be permitted on any front seat of the vehicle.

8. The licensee shall not reconstruct, materially alter, modify, or add to the body or seating arrangements of any such motor vehicle after the license thereof is issued, without first applying for and receiving the consent of the licensing authorities.

9. No license shall be transferable or applicable to any other motor vehicles than those specified therein, or between any other termini or on any other route or routes, provided, however, that the licensing authorities may, upon application filed with the city or town clerk, revise said license in accordance with the provisions of these regulations, so that under said license as revised another motor vehicle may be substituted for one previously covered, or either the termini or the route or routes set forth in the license may be changed.

10. The schedule of operation filed by the licensee with his application for said license shall provide for the regular operation of a motor vehicle between the termini and over the route designated in the license for a period of not less than twelve consecutive hours out of every twenty-four hours, allowing a reasonable time, not exceeding two hours in the aggregate, for going to and from meals, and with intervals of not more than one hour between successive trips in the same direction where the distance

between termini is 5 miles or less. The licensee shall regularly operate a motor vehicle in substantial accordance with the schedule of operation filed and in effect at the time, except in cases of accidents, break-downs, or other controlling emergency, shall operate such motor vehicle to the terminus of the route before turning around, and shall not operate nor permit to be operated any such motor vehicle off or away from the route stated and fixed in the license for the operation of such motor vehicle except in case of controlling emergency. Nothing herein shall be construed to prohibit the operation, in addition to the service described in the schedule on file and in effect at the time, of special or extra trips over said route and between said termini during certain hours or on special occasions.

11. No licensee shall charge, demand, collect, or receive a greater or less or different compensation for the transportation of passengers, or for any service in connection therewith, than the rates, fares, and charges applicable to such transportation as specified in the schedule filed and in effect at the time.

12. No change shall be made by any licensee in the termini between which or the route over which such motor vehicle is operated, in the rates charged, or in the schedule of operation, except after seven days' notice to the clerk of each city or town in which such change is to be made effective.

13. No person operating any motor vehicle so licensed shall refuse to carry any person offering himself or herself at any regular stopping place for carriage, unless the seats of such vehicle are fully occupied, or unless such person is in an intoxicated condition, or conducting himself in a boisterous or disorderly manner, or is using profane language.

14. No motor vehicle so licensed shall be operated from one-half hour after sunset till one-half hour before sunrise, with the top and curtains of said vehicle up, or while said vehicle is otherwise inclosed, unless there be sufficient light provided to adequately light the whole of the interior of said vehicle; and all motor vehicles so licensed with a seating capacity of more than seven passengers shall come to a full stop immediately before crossing the tracks of any railroad at grade.

15. Every such motor vehicle shall be equipped with a suitable horn or other similar warning device, with a standard speed-

ometer, and with a liquid fire extinguisher of a design or type approved by the licensing authorities; and such horn, speedometer, and fire extinguisher shall be kept in satisfactory operating condition at all times. Every such motor vehicle shall, when leaving either terminus, be equipped with at least one extra serviceable tire, and shall at all times carry and maintain in good working order a set of skid chains, which shall be applied to the rear wheels when such vehicle is operated in any street or public place where there is snow or ice, or during other weather conditions when the application of such chains is necessary to prevent skidding.

16. No person operating any motor vehicle so licensed shall collect fares, make change, or take on or discharge passengers while such vehicle is in motion; nor shall he have a lighted cigarette, cigar, or pipe in his possession while any passenger is being carried therein, nor drink any intoxicating beverage or use morphine, cocaine, opium, or other harmful drug of any kind, or be under the influence thereof while engaged in operating such vehicle.

17. Any such licensee shall immediately report fully, in writing, to the city or town clerk, any fatal accident or any injury to a passenger or other person, and any accident resulting in substantial damage to property, in which said motor vehicle is involved.

18. The licensing authorities may suspend or revoke any license granted for the operation of such motor vehicle, and any license issued to any person to drive or operate the same, for violation of any law of the commonwealth made in relation to the operation of motor vehicles, or violation of any traffic ordinances of such city or town, or violation of any of the rules, restrictions, requirements, or regulations herein prescribed, or for any other cause deemed by said selectmen, in the exercise of reasonable discretion, to be sufficient.

19. The holding or adjudication of any paragraph or subdivision of the rules and regulations herein prescribed to be unconstitutional or invalid shall not affect the validity of any other paragraph or subdivision, but all other paragraphs and subdivisions shall be and remain in full force and effect.

NEVADA PUBLIC SERVICE COMMISSION.

RE GINOCCHIO BROTHERS.

(C. P. C. Application No. 28.)

Certificates of convenience — Ground for refusal — Failure to obey law.

1. The failure of an operator of an auto truck line to comply with the requirements of the Nevada Railroad Commission Law, in the matter of filing rates, bond, and annual reports with the Commission, is immaterial upon an application for a certificate of convenience and necessity for continuing operation upon a line already established.

Certificates of convenience and necessity — Grounds for refusal — Failure to file bond.

2. The failure of an operator of an auto truck line to file a bond issued by a "company authorized to do business in the state of Nevada," as required by the statute of the state, is not sufficient to prevent the issuance of a certificate of convenience to continue operation, where bonding companies were not prepared to accept this character of business.

Service — Automobiles — Trucks — Station.

3. The provisions of the Nevada statute requiring railroads to establish depots, are not applicable to auto truck lines, since they make direct delivery and receipt of traffic.

Monopoly and competition — Occupied territory — When competition will be allowed.

Discussion of general element to be considered under Nevada statute upon application to enter occupied territory, p. 337.

Certificates of convenience and necessity — Several applications — Same territory.

Discussion of elements to be considered where there are several applications for certificates of convenience to operate in same territory, p. 338.

Monopoly and competition — Occupied territory — Effect of adequate service.

Discussion of duty to protect existing utility which is rendering adequate service, p. 338.

Service — Automobiles — Auto truck line.

Discussion of request of Federal authorities that auto truck lines be used to relieve railroads, p. 339.

Note.—Precedence in Filing Application.

Mere precedence in time of filing applications for certificates of convenience and necessity for the operation of motor busses should be used only as a last resort, in determining the preference as between two applicants for certificates, and this is especially true where there is no substantial difference in time. Re Morris (Nev.) P.U.R. 1922B, 459.

Railroads — Construction — Promotion of rival town.
Discussion of railroad policy of establishing terminals to build up rival town, p. 341.

Service — Railroads — Local short haul service.
Discussion of obsolete character of standard railroad equipment for rendering local short haul service, p. 345.

Service — Railroads — Comparison with auto truck.
Statement showing comparison of cost of operating steam train and motor car over short line, p. 346.

Service — Auto trucks — Value.
Discussion of value of auto truck line in development of various interests in Nevada, p. 347.

[January 24, 1920.]

APPLICATION for a certificate of public convenience and necessity to operate an auto truck line between Reno and Gardnerville and intermediate points; granted.

Appearances: L. J. Ginocchio, owner, James Ginocchio, owner, George A. Montrose, attorney, E. Christensen, for Gardnerville Shippers, and E. C. Howard, for Gardnerville shippers, for Ginocchio Brothers, applicant; A. M. Ardery, vice-president and general manager, F. E. Murphy, attorney, George L. Sanford, attorney, and Howard L. Griffiths, traffic manager, for Virginia & Truckee Railway, protestant.

Shaughnessy, Chairman: The issues in this proceeding arise upon application of Ginocchio Brothers, hereinafter termed applicant, for a certificate of public convenience and necessity to operate an auto truck freight service between Reno and Gardnerville and intermediate points, at fixed rates for service between said points, which are on file with this Commission. The truck line has been in operation for several years and, following the passage of an amendment or re-enactment of the Public Service Commission Act (§ 36½) by the legislature of 1919, all owners of public utilities were notified to make application for a certificate of public convenience for authority to continue the rendering or the extension or improvement of service, as provided for in the aforesaid section. Conformable to this amendment, therefore, Ginocchio Brothers filed their application and hearing upon the same was had before the Commission on July 28, 1919, at which time the Virginia and Truckee Railway Company, hereinafter termed protestant, represented by its vice-president and attorney,

appeared in protest against the granting of said application and asked for further hearing and opportunity to submit formal pleadings and further testimony in the proceeding. This request was granted, and thereafter said formal protest and additional testimony was, on October 11, heard before the Commission at a public hearing at Carson City, Nevada, wherein applicant was afforded full opportunity to cross-examine protestant's witnesses and to offer additional testimony, which was done.

Pleadings and Testimony of Protestant.

Protestant made the following allegations:

That it is a steam railway common carrier operating daily freight and passenger trains in each direction between Reno and Virginia City, a distance of 52 miles, and that it operates a daily mixed train service between Carson City and Minden, a distance of 15 miles, and that its passenger service during the spring, summer and fall months is augmented by the operation of a high-grade motor-car service daily in each direction between Gardnerville, Carson City, and Reno, and that for the future it will continue a train service that will promptly and properly meet all the requirements of the shipping public contiguous to its lines and notably to and from Carson City, Minden, and Gardnerville; that it is not unmindful of the important part that automobile transportation is taking in the commercial activities of the day, of the study, wisdom, and foresight that must govern the new responsibilities upon the Commission, in order that the public may be fairly protected and that no injustice may be done to establish carriers; that the benefits to be derived by the people should be fairly subserved, while at the same time seeing that care is exercised in the inauguration of new systems of transportation in order to prevent unwarranted abuses. That, in this behalf, the public should be safeguarded by the requirements of indemnity bonds from auto transportation companies as a guaranty against loss by injury to persons, loss and damage to baggage and freight, and the surety of carrying out the orders of the Commission, as provided in § 18, requiring that bonds shall be filed by automobile transportation companies in amounts ranging from a minimum of $500 to a maximum of $10,000. That the establishment of central freight and passenger depots, as required

by § 22 of the Public Service Commission Act of all railroads, should be exacted of the auto truck lines as an essential part of the transportation service rendered by them; that the filing of complete tariff schedules, both to terminal and intermediate points, should be strictly enforced and required of auto transportation agencies in the same manner as such regulations are enforced against railway common carriers. Further, that the Public Service Commission was created not only to protect the interests of the shipping and traveling public by the establishment of proper and reasonable rates and provisions for adequate service, but it was likewise within the province of the Commission and obligatory upon it, so far as within the scope of its jurisdiction, to protect invested capital in public service industries, in order that sufficient revenue may be insured to guarantee the service which may be expected from such enterprises, and the payment of a reasonable return upon the investment.

Railway Valuation and Earnings.

Protestant further alleges that the total assessed valuation of its railway system for the year 1919 was approximately $900,000; that the company paid in taxes $9,448 in Ormsby county, $2,399 in Douglas county, $5,240 in Washoe county, $2,061 in Lyon county, and $4,422 in Storey county; that the total net income from all freight and passenger traffic of every kind and nature of said railroad was diminishing because of high cost of labor, material, and supplies, and in this behalf would amount to the sum of only $8,845 for the year ending June 30, 1919; that no depreciation was charged against the gross earnings in arriving at the net, and that if the same had been charged, as allowed by law, there would be a deficit; that the scrap or residual value of the railroad was from $400,000 to $450,000, and that if the owners of the property saw fit to junk the railroad they could derive an approximate income of from $24,000 to $27,000 annually by an investment in ordinary available securities, an amount exceeding the sum representing net income under present operations; that a segregation of the earnings and operating expenses covering railway freight business between Reno and Minden was made and placed in evidence by protestant, showing that for the year ending December 31, 1918, the gross earnings were

$53,648, whereas operating expenses were estimated at $50,586, and taxes at $4,132, or total expenses amounting to $54,718, from which it was made to appear that there was an estimated loss in freight service amounting to $1,070. In this connection, however, it was shown that the net earnings of the protestant's railway system as a whole, reported and on file with the Public Service Commission, for the five-year period, 1915 to 1919, inclusive, amounted to $145,411, or an average net income of $29,082 per annum.

Truck Line Diminishes Railway Income, Already Inadequate to Pay Fair Return on Investment.

Protestant further alleges that said freight truck line has defeated any right it might have obtained to continue service as an established carrier by a departure from its tariffs on file with the Commission, by the acceptance of a subsidy of one dollar per ton in addition to its published rates which it is alleged is paid as a bonus for a constructive haul of freight from Minden to Gardnerville. Further, because it failed to file its rates, bond, and reports with the Commission to cover its operation for the years 1917 and 1918, or not until its application for a certificate of public convenience was made under the law as amended in 1919; that it is impractical and impossible for a truck line to alone adequately transport all freight handled by the railway during the summer season, and during part of the winter season impossible to transport any freight whatsoever; that the railroad has, in the past, and does now, give an all year daily service, and that the railroad is an absolute necessity for the progress and development of the country served; that the railroad is not making an adequate return upon its investment; that the operation of the truck line depreciates the income of the railroad because the freight and the income of the truck company would ordinarily accrue to the railroad; that the territory served is limited and the installation of another carrier would further depreciate the revenues of the railway and eventually result in inferior service, greater freight charges and higher passenger rates, if an adequate return is to be realized upon protestant's railway; that no necessity has been shown or established requiring the operation of the proposed truck line, and that it has not been shown that the convenience of the

public will be met by the operation of such a truck line, in consideration of which protestant alleges that neither public convenience nor necessity is to be subserved by the continuation or establishment of a competitive auto truck service to and from the stations mentioned. While not reaching or serving the town of Gardnerville directly, protestant alleges that it is within reasonable delivery distance from Minden Station, its terminal, which is located one mile from the town of Gardnerville, and that, therefore, the latter point should not be considered as competitive territory entitled to additional privileges or services to that rendered by the railroad; that if the service rendered by the Virginia and Truckee Railway Company is not adequate for the territory served, complaint should be made, hearing held, and thereafter an order made by the Commission by which the public will be granted such service as is contemplated and required by the law.

Applicant's Answer and Supporting Testimony.

Ginocchio Brothers, the applicant in this proceeding, represented by counsel, and accompanied by witnesses from Gardnerville, filed answer and appeared at the aforesaid hearing in support of said application for a certificate of public convenience and necessity to continue the operation of an auto freight truck line between Gardnerville and Reno. By answer, testimony and documentary evidence, applicant made the following showing:

That it operates an auto freight truck line and renders service between Reno and Gardnerville and intermediate towns, cities, and ranches, as well as rendering service in the city of Reno; that it began operating said auto line with two three-ton trucks in April, 1916, and so continued until June, 1919, when a third three-ton truck was placed in service; that the road mileage over which said operations are conducted between Reno and Gardnerville is 51 miles and the running time is three hours and twenty minutes; that the truck line not only transports, but also picks up and delivers traffic at residences, farmhouses, warehouses, and stores; that it operates a triweekly service and renders extra service as business justifies, unless prevented by impassable road conditions during infrequent heavy storms; that all classes of traffic offered are handled without discrimination to the public desiring service between Reno and Gardnerville at the rate of 40 cents per

hundred pounds or $8 per ton, except on bulky freight such as wool, furniture, etc., which is charged for on a space or service basis; that in the handling of various classes of traffic between said points sheep and hogs have been freely transported, and, while thus far no cattle shipments have been made over this line, it is asserted that by equipping the trucks with proper racks this class of live stock can be handled; that the daily gross earnings average $60 per day on said line including Reno business to and from ranches along the route, and that, after paying expenses and upkeep, the net earnings average approximately $20 per day. Further, that the business men of the town of Gardnerville invited and requested the said Ginocchio Brothers to enter into the business of hauling and transporting freight between the city of Reno and the town of Gardnerville; that since the first trip of the trucks they have been constantly supplied with freight by the merchants of Gardnerville and at the present time are constantly hauling such freight; that freight is now landed at the doors of the Gardnerville merchants with promptness and safety and at a saving to them over the rates charged when shipments are made over the Virginia and Truckee Railway, as cartage and storage are eliminated; that said auto truck line has heretofore been, and is now, giving satisfaction to the general public as a common carrier, and that in support thereof the people of Gardnerville have filed with the Public Service Commission a petition requesting that a certificate of public convenience be granted to said Ginocchio Brothers to operate an auto freight truck line between Reno and Gardnerville.

Virginia & Truckee Railway Fails to Extend Service to Gardnerville.

Applicant further alleges that the said Virginia & Truckee Railway has failed to adequately meet the transportation requirements of the public at Gardnerville and points beyond, and that this failure works against the best interests of the people of Gardnerville and adjacent territory; that the Virginia & Truckee Railway maintains, and has maintained, a terminal station at Minden, a mile or more from the town of Gardnerville; that against the protest of the general public, said terminal was established at its present location at a time when the said town of Minden

was a town site without a town; that this action is prejudicial and opposed to the welfare and best interests of the town of Gardnerville and its citizens; that the said Virginia & Truckee Railway has been solicited at various times to extend its line to the town of Gardnerville, in consideration of which offers have been made to supply free of charge depot and warehouse sites, and in many other ways to assist the said railway in becoming a public carrier for the convenience and service of the town of Gardnerville, but, in this behalf, the said railway has refused, and does now refuse, to consider the matter and has ignored the requests and offers made; that in retaining the town of Minden as the terminal point of said railway in Carson Valley and refusing to extend service to the town of Gardnerville and adjacent points, the merchants and business men of Gardnerville are discriminated against by said railway company in the delivery of freight and merchandise in favor of the merchants and business men of Minden; that freight is delivered to the Minden merchants at or near their doors or platforms by the railroad, while, on the other hand, the same character of freight consigned to the Gardnerville merchants is unloaded at the freight depot and then transported to the Gardnerville stores at a cost of $1 per ton.

Railway Less Than Carload Freight Service Slow.

Further, representative merchants of Gardnerville testified that the Virginia & Truckee Railway does not and will not transport freight in less than carload lots daily between Reno and Minden, and, in consequence, such shipments from Reno and California points are unreasonably delayed in transit at Reno and Carson City, waiting for carload lots to be accumulated before completing the haul and making delivery at Minden; that goods can be received directly at their store door from Reno the same day as ordered when shipments are made by applicant's auto truck line, whereas, if routed over protestant's railway the freight does not leave Reno until the following day, and with transfer and layover at Carson City two or three days have elapsed from time of order before delivery is made at Minden, and thereafter they are put to the trouble and expense of having the freight transported from the depot to their stores in Gardnerville; that, if under present conditions and for the aforesaid reasons appli-

cant's trucks are ordered off the run, and they are unable to secure this expedited service, the merchants asserted that they would find it necessary to operate their own trucks between Gardnerville and Reno. Further, statement was also made that Gardnerville will donate depot site, right of way, and lands and will arrange with Ginocchio Brothers to discontinue operations between Gardnerville and Reno, and arrange service for their trucks in other sections, if the Virginia & Truckee Railway will extend its line into Gardnerville and render transportation service to and from there for the future.

Jurisdiction of the Commission.

The jurisdiction of the Commission and its power to act in a proceeding such as is here under consideration is made clear by reference to §§ 7, 18, and 36½ of the Public Service Commission Law as amended and re-enacted March 28, 1919, which are set forth below:

SEC. 7. The term "Public Utility" as used herein, shall mean and embrace all corporations, companies, individuals, associations of individuals, their lessees, trustees or receivers (appointed by any court whatsoever) that now or may hereafter own, operate, manage, or control any railroad or part of a railroad as a common carrier in this state, or cars or other equipment used thereon, or bridges, terminals, or sidetracks, or any docks or wharves or storage elevators used in connection therewith, whether owned by such railroads or otherwise; also any company or individual or association of individuals owning or operating automobiles, auto trucks, or other self-propelled vehicles, engaged in transporting persons or property for hire over and along the highways of this state as common carriers; also express companies, telegraph and telephone companies, and all companies which may own cars of any kind or character, used and operated as a part of railroad trains, in or through this state, and all duties required of and penalties imposed upon any railroad or any officer or agent thereof shall, in so far as the same are applicable, be required of and imposed upon the owner or operator of said automobiles, auto trucks, or other self-propelled vehicles, transporting persons or property for hire over and along the highways of this state as common car-

riers, express companies, telegraph and telephone companies, and companies which may own cars of any kind or character, used and operated as a part of railroad trains in or through this state, and their officers and agents, and the Commission shall have the power of supervision and control of all such companies and individuals to the same extent as of railroads; *provided, however,* that automobiles used exclusively as hearses or ambulances operated within the limits of cities and towns, and other automobiles which have no specified routes of travel, and which are not operated as common carriers, shall not be construed as being under the jurisdiction of the Commission within the meaning hereof. "Public Utility" shall also embrace every corporation, company, individual, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate or control any plant or equipment, or any part of a plant or equipment within the state for the production, delivery or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, light, power in any form or by any agency, water for business, manufacturing, agricultural or household use, or sewerage service whether within the limits of municipalities, towns, or villages, or elsewhere; and the Public Service Commission is hereby invested with full power of supervision, regulation and control of all such utilities, subject to the provisions of this act and to the exclusion of the jurisdiction, regulation and control of such utilities by any municipality, town, or village, unless otherwise provided by law.

(a) The provisions of this act and the term "Public Utility" shall apply to the transportation of passengers and property and the transmission of messages between points within the state, and to the receiving, switching, delivering, storing, and hauling of such property, and receiving and delivering messages, and to all charges connected therewith, including icing charges and mileage charges, and shall apply to all railroads, corporations, automobiles, auto trucks, or other self-propelled vehicles, express companies, car companies, freight and freight-line companies, and to all associations of persons, whether incorporated or otherwise, that shall do any business as common carriers upon or over any line of railroad or any public highway within this state, and to any common carrier engaged in the transportation of passengers

and property, wholly by rail, or partly by rail and partly by water.

SEC. 18. The Commission shall have power, in the interest of safety or service, after hearing, to determine and order required and necessary repairs, reinforcements or reconstruction of property, lines, equipment, appliances, buildings, tracks and all property used or useful in the service; to order the use of safety appliances in the interest of employees and the public, and to make and enforce any rule or regulation necessarily incident thereto; the Commission shall have the power to require each automobile common carrier, subject to the provisions hereof, to file and keep in force with the Commission an indemnity bond approved by the Commission in an amount not less than five hundred ($500) dollars nor more than ten thousand ($10,000) dollars for the purpose of reimbursing passengers or shippers for loss or damage or personal injuries caused by the neglect of any automobile common carrier, its owner, operator, agent or employee.

The Commission shall have the power to regulate the manner in which the tracks of any street, steam or electric railroad or other common carrier crosses the tracks of any other railway or common carrier, and prescribe such regulations and safety devices as may be necessary for the protection of the public and the prevention of accidents.

SEC. 36½. Every public utility owning, controlling, operating, or maintaining or having any contemplation of owning, controlling, or operating any public utility shall before beginning such operation or continuing of operations, or construction of any line, plant or system or any extension of a line, plant, or system within this state, obtain from the Public Service Commission a certificate that the present or future public convenience or necessity requires or will require such continued operation or commencement of operations or construction; *provided,* that nothing herein shall be construed as requiring a public utility to secure such certificate for any extension within any town or city within which it shall theretofore have lawfully commenced operations or for an extension into territory either within or without the city or town contiguous to its railroad, line, plant or system and not then served by a public utility of like character. Upon the granting of any certificate of public convenience, the Commission may make such

order and prescribe such terms and conditions for the location of lines, plants, or systems to be constructed, extended or affected as may be just and reasonable.

Every applicant for a certificate of public convenience shall furnish such evidence of its corporate character and of its franchise or permits as may be required by the Commission. The Commission shall have the power, after hearing, to issue or refuse such certificate of public convenience or to issue it for the construction of a portion only of the contemplated line, plant or system or extension thereof, and may attach thereto such terms and conditions as, in its judgment, the public convenience and necessity may require.

No public utility beginning, prosecuting or completing any new construction in violation of this act shall be permitted to levy any tolls or charges for services rendered, and all such tolls and charges shall be void.

It shall be unlawful for any public utility to discontinue, modify or restrict service to any city, town, municipality, community, or territory theretofore served by it, except upon twenty (20) days' notice filed with the Commission, specifying in detail the character and nature of the discontinuance, or restriction of the service intended, and upon order of the Commission, made after hearing, permitting such discontinuance, modification or restriction of service.

All hearings and investigations under this section shall be conducted substantially as is provided for hearings and investigations of tolls, charges and service. Every order refusing or granting any certificates of public convenience, or granting or refusing permission to discontinue, modify or restrict service, as provided in this section, shall be prima facie lawful from the date of the order until changed or modified by the order of the Commission or in pursuance of section 33 of this act; *provided, however,* that a municipality constructing, leasing, operating or maintaining any public utility shall not be required to obtain a certificate of convenience.

Commission's Interpretation of § 36½.

Section 36½ seems to clearly provide that applications for certificates of public convenience must be made to the Commission for

authorization to continue the rendering, the extension, and the improvement of service by established public utilities, and by new or invading utilities where proposal is made to establish facilities for the rendering, extension, and improvement of the public service either in fields already served or in those where service has not theretofore been given.

In the investigation of applicants for certificates of public convenience made by established or similar or improved public service agencies for authorization to operate within defined sections, the Commission understands that the following elements are, under the law, presented for consideration in reaching its conclusion authorizing or rejecting said applications:

That in so far as there may be no restriction to the natural progress and improvement in the act of rendering modern and efficient service, in the investment and the business of an established utility where it has been wisely and beneficially made and the public is being adequately and economically served, should receive protection. In other words, the established utility's field of operations and business should be protected from invasion by a competing utility or utilities in those cases where only the same or an equivalent service is offered, or where it may reasonably appear that, by the establishment of additional utilities, the grade of a public service may be seriously impaired by such a division of the revenues available that ultimately the operations could not be profitably conducted and at the same time maintain the facilities in a proper state of efficiency. Further, in the same behalf, where the granting of the application of a competing utility or utilities would call for unnecessary investment and duplication of plant facilities, and by the division of the earnings which would follow in the race for the survival of the fittest, it reasonably appears that the operations may result in loss to the investing public and serious impairment of the service, protection to the public should be accorded.

That in those cases, however, where it appears after hearing and investigation that a more modern and improved service and at better rates is offered upon the application of a new utility than is being afforded by the established utility occupying a given field, said established utility may be given an opportunity to modernize and extend its service facilities and operations and meet

the rates in question offered if satisfactory showing is made that it is financially able and willing to do so within a reasonable time. In such cases it will not be unreasonable to afford protection to the established utility and exclude the incoming utility from establishing operations. But, if it is shown that the established utility is unable, without unreasonable delay and uncertainty, or if it refuses to modernize its facilities and meet the improvement in service and rates offered, it will then be justifiable and reasonable to grant the application and authorize the incoming utility to establish its business in the interest of progress and modern improvements in the art of rendering public service.

When two or more applications are before the Commission for determination covering similar or the same service conditions within a particular territory, or in the event that two or more competing utilities are already established, the question of priority in time and the question of the effective regulation of the utilities in such manner as will render proper service, while at the same time insuring a modern and adequate system of operating facilities, is entitled to consideration. In such cases the end sought will be the modernizing and the bringing of the facilities up to a satisfactory standard for the rendering of an adequate public service, and it, therefore, follows that effective regulation of facilities, rates, and practices should be enforced by the Commission in order to afford protection to the utility or utilities which can fully and beneficially serve the public and, at the same time, make sufficient revenues to properly maintain their system or systems, and thereafter continue in the public service profitably.

Manifestly, the public service business has its limitations and, unless there is effective regulation of the utilities in question, and in certain cases a denial of the applications of incoming utilities for authority to participate in a public service in sections already adequately served, such unrestricted competition would result in obsolescence and deferred maintenance in the plant and facilities to such an extent that the public service would not only be badly demoralized, but also necessary improvements therein from time to time could not be afforded.

The established utility in point of time and service is, under the law, and subject to the aforesaid qualifications, entitled to the

larger consideration, and, although no action can be authorized which will have the effect of impeding progress and improvements in the art of rendering public service, yet it may fairly be given the opportunity to reconstruct and make such improvement in its plant, system, or facilities, including the extension thereof, as will enable it to adequately meet the proposed competition in service and rates offered by the new utility. But, if the established utility elects not to make the improvements and extensions, including the establishment of the lower rates, proposed by the invading competitor, or is unable to do so, we are aware of no action which can, under the law, be taken to prevent the establishment of such improvements in service and rates to the public, nor do we think in such cases there should be any restriction exercised.

Protestant Shows That Applicant Failed to Comply with Laws of 1907.

[1] Failure of applicant to comply with Railroad Commission law, as amended March 27, 1917, in the matter of filing rates, bond, and annual reports with the Commission, was established by protestant at the hearings, and for this reason it was urged by protestant that applicant is without standing as an established operating common carrier. In this behalf, the application is not for an extension of the applicant's service, and, as all public utilities are required to secure a certificate of public convenience and necessity from the Commission before beginning of continuing operations, under § 36½ as amended in 1919, we are unable to see that said failure changes the issues here presented for consideration. Following the enactment of said section, the Commission issued instructions to all public utilities to continue the rendering of essential public service until such time as their applications could be filed, heard, and determined.

Federal Departments Call for Maximum Use of Auto Truck Lines to Relieve Railroads for War Purposes.

Following the amendment to the Railroad Commission Law in 1917 defining automobile transportation lines as common carriers and making them subject to regulation as to their rates and reports, and requiring the filing of surety bonds with the Commis-

sion, it may be noted that the world wide war was upon us and that both the Council of National Defense and the Federal Railroad Administration were urging the people to ship by auto truck and aid the railroads in relieving freight congestion and car shortages to the fullest extent possible during the war emergency. As indicative of the necessity and the value which is still placed on the auto truck lines as public service agencies, and as an auxiliary to the railways in relieving traffic congestion and car shortages, there is set forth below an appeal issued to the shipping public in the early fall of 1919 by Hon. Walker D. Hines, Director-General of the Federal Railroad Administration:

An unusually heavy grain and coal movement, deferred repair and construction of public highways in all sections of the country, and the concentrated requirement of suddenly reviving business, combined with the usual transportation requirements of this time of the year, threaten a serious lack of transportation facilities, unless all parties interested co-operate in securing the greatest possible utility from the existing limited transportation facilities. All shippers should assist in this work by loading all cars to capacity; by prompt loading and release to the carrier; by ordering cars only when actually required; and by *elimination of the use of railway equipment in such service where the tonnage can be handled by motor truck.*

In Re Bonds and Depots.

[2] Regarding the bonds required by the Railroad Commission Act, section 7, as amended in 1917, it should be noted that "an indemnity bond issued by a company authorized to do business in the state of Nevada, in an amount not less than $500 nor more than $10,000" was required to be filed with the Commission; but as said companies were not prepared to accept this character of business, it was impossible to enforce this provision. Inquiry is now being made by some surety companies preparatory to accepting this character of risk for the future. The Act of 1917 has been amended in this respect so that at present an ordinary indemnity bond is specified, and all auto transportation companies are being required to execute and file such bonds with the Commission as rapidly as their applications for certificates of public convenience and necessity can be heard and decided.

[3] Protestant's contention that applicant be required to establish depots in the same manner as required of the railroads by § 22 of the Public Service Commission Act is not well grounded, for the reason that the auto truck line makes direct delivery and receipt of traffic. In other words, it performs a complete terminal service in connection with its line haul, and, therefore, eliminates the necessity of delivery and storage of freight in a depot until called for or shipped out as is the case with railroads. However, in the interest of the public service, we are of the opinion that applicant should be required to establish an agency point within each town or city served where messages for service and the receipt and delivery of package freight can be taken care of.

Railroad Townsite Controversy.

There has been energetic effort made by the people of Gardnerville to secure rail service from protestant ever since the Minden branch line was built from Carson City in 1905, and bitter complaint has been freely made at every opportunity presented against the old indefensible railroad policy of establishing terminals (after the purchase or donation of land) and promoting and building up a rival town at the expense of some nearby city or town. It need not be inquired into or explained at this time why such a policy has been followed by the railways of the country, but the fact that such action has been freely taken is one of the underlying causes of public hostility to the railroads. The people of Gardnerville have long maintained that in consideration of a free right of way grant, protestant agreed to and did make its terminal at Minden, instead of building into or through Gardnerville, which, from a construction standpoint, could have been done easily and economically. In this connection, attorney F. E. Murphy, for the Virginia & Truckee Railway, testified in this proceeding as follows, regarding his company's failure to build into and render service to Gardnerville (page 40, Record of October 11, 1919):

SHAUGHNESSY—Is there any contractual reason why the V. & T. cannot build into Gardnerville?

MURPHY—Our right of way does not extend to Gardnerville.

SHAUGHNESSY—Could those rights of way be secured and, if

secured, would there be any violation of a contract on previous right of way grants that would prevent you?

MURPHY—Not excepting the extension up to the right of way fence.

SHAUGHNESSY—I mean the extension of your line from Minden to Gardnerville. Is that prevented by contractual agreements relating to right of way grants?

MURPHY—I don't believe so.

SHAUGHNESSY—Were such agreements as that entered into? That is very freely charged in all of these proceedings.

MURPHY—I presume that there was an agreement that we would not build beyond that right of way that was granted. Regarding the matter of building closer to Gardnerville—Gardnerville was antagonistic and they did not feel that the railroad would be built up there and no right of way was granted and, in fact, we were given to understand that there would be no right of way granted.

SIMMONS—At what time was that?

MURPHY—In 1905. But the principal reason for the location of the road was the extension out to the new country beyond. There is a very valuable mining property out there, and it is as valuable to-day as it was then, and I presume the only reason that it is not exploited is because of the price the present owners hold it for. I refer to the Loope district in Alpine county.

Further, with a view to effectuating if possible a joint rail and truck line service between Reno and Gardnerville, the following questions were asked of and answered by attorney Murphy at the original hearing on July 28, 1919:

SHAUGHNESSY—In working out the competitive features here involved, and also the additional service which the auto truck seems to bring to the public, would your company be in a position to consider the establishment of a delivery service on the business that is here being considered from the warehouse at the point of purchase to the store door at point of delivery?

MURPHY—That could not be considered because we have been notified that any rates issued must be in accordance with Federal traffic regulations.

SHAUGHNESSY—But they would listen to your appeal, would they not?

MURPHY—I doubt very much if they would permit any consideration of that in the issuance of a rate.

SHAUGHNESSY—Of course that remains to be seen; but I am suggesting the establishment of this service either by ownership of the facilities by the railroad or through joint operation with the established auto carriers.

MURPHY—The truth of the matter is that, on a proposition of that kind—the establishment of such delivery service—the loss would probably be greater than the amount we lose through auto competition.

Railroad Income Diminishing—Carload Rates Too Low.

Protestant contends that the application here under consideration to continue the operation of an auto truck line between the aforesaid points should be denied because it reduces railroad revenues and that because of increased costs of labor, material, and supplies its net earnings are diminishing and have fallen to $8,845 for the year ending June 30, 1919. This is a return of only 6 per cent on a capital investment of $147,000, whereas the reproduction cost of the line is not less than one million dollars. It may, therefore, be noted that under present operating conditions the earnings of the company are inadequate.

Charges for railway freight service between Reno and Minden vary according to classification. The first five classes maintained by protestant will perhaps cover the bulk of the traffic which is handled by applicant at a rate of $8 per ton from warehouse receipt to store door delivery; whereas the average charge made by protestant from freight depot to freight depot is about $8 per ton, and, when terminal and cartage charges approximating $1 per ton between warehouse and stores and the depots at Reno and Gardnerville are added, the railroad transportation and terminal charges, covering said five classes of freight traffic, will average about $10 per ton. If the average of the entire ten classes of the railroad is taken, it may be stated that the transportation charges between the aforesaid points amounts to $6 per ton, or $8 per ton when terminal receipt and delivery charges are added as aforesaid.

In this behalf, however, it should be noted that these rates cover only a very small proportion of protestant's freight busi-

ness. The great bulk of it is handled in carloads under special commodity rates which range from an average of 80 cents per ton up to $5 per ton. Hay, grain, flour, lumber, structural steel and iron, farming implements, and junk are transported between Minden and Reno at a rate of $2.50 per ton. Likewise sheep and hogs are transported at a rate of $2.60 per ton, and cattle at a rate of $3 per ton. Plaster and gypsum are shipped in carloads, averaging 40 tons each from Mound House to Reno a distance of 41 miles. In rendering this service there is involved the movement of empty cars inbound from Reno and after switching and loading at Mound House, the return or outbound movement of the loaded cars to Reno, at a rate of $1.20 per ton if the shipment is local and destined to Reno, but if it is destined to San Francisco and various other California points, where the bulk of this commodity is disposed of, protestant's proportion of the through joint rate with the Southern Pacific lines is only 80 cents per ton.

Further in this behalf, it may be noted from protestant's reports on file with this Commission that the total freight commodities handled for the year ending December 31, 1918, amounted to 104,519 tons, of which 79,242 tons originated on protestant's lines. In this connection 52,529 tons or 50.25 per cent of protestant's entire freight traffic is plaster and gypsum moving from Mound House and that, with the exception of only a few carloads sold within our state, this commodity is shipped to California points. The through joint rate from Mound House to San Francisco Bay points is $3.40 per ton, out of which protestant receives as its division the aforesaid 80 cents per ton. The Virginia & Truckee Railroad initiates this traffic on its line, performs a double transportation haul of the cars and does all of the switching at Mound House and in addition thereto delivers the loaded cars to the Southern Pacific line at Reno ready to be placed in a through freight train for transportation to California points. This service, and also that of originating and delivering various other interline shipments of live stock, manufactured commodities, and the products of the mines, of the soil, and of the forest, is exceedingly valuable to the Southern Pacific Company for the reason that protestant's line serves an important section of Nevada and furnishes a large tonnage of interline traffic to the Southern Pacific Company, from which it follows that the line is a

highly profitable feeder to said company. We are, therefore, of the opinion that the Virginia & Truckee Railroad should not be required to take less than its local rate covering the originating, the delivering and switching movements of low grade commodities such as plaster and gypsum.

Further, 7,934 tons of agricultural products were handled by protestant's line during said year of 1918, 75 per cent of which originated in Carson Valley and moved out from Minden to Reno at a rate of $2.50 per ton. During the same period 7,396 tons of live stock were transported, 90 per cent of which originated in Carson Valley and moved to Reno at a rate of $2.60 per ton for sheep and hogs, and $3 per ton for cattle.

The freight earnings made by protestant's railroad during said year 1918 were $168,897, from which it is to be observed that for the handling of the aforesaid 104,519 tons of freight the average earnings were only $1.62 per ton. This brief analysis of railway freight statistics speaks for itself and indicates that there is a fair margin within which protestant's rates may bear such reasonable increases as will enable it to further modernize its facilities and rearrange its services sufficiently to meet changing transportation and economic conditions, and at the same time pay a reasonable return upon the fair present value of the property beneficially devoted to the use of the public.

Standard Railroad Equipment Obsolete for Rendering Local Short Haul Service.

Heretofore the railroads have depended upon rendering both their carload and their less than carload freight services on a slow moving local freight train, including unreasonable transfer delays to less than carload shipments at junction points, which has resulted in turning the shipping public to the use of direct auto truck line transportation covering 25- to 100-mile hauls. It is conceivable that if the railways desire to retain this less than carload freight business they may provide a more flexible and direct train service between points on their lines. This might be accomplished by motorizing the rails for freight service somewhat along the same lines followed in the operation of motor passenger car train service. It has been proven that the motor passenger car is an economical train unit, and affords a highly attractive and

expeditious service to the public. It has also been found that the cost of their operation compared to steam train operation is very economical. For example, in an investigation made by the Commission during 1919, it was shown that the operation of a suburban passenger railway train round trip service between Ely and McGill, a distance of approximately 30 miles, cost $52 per day for train crews, coal, oil, and ordinary repairs, whereas the cost, including depreciation, for the operation of an 84-passenger seating capacity McKeen motor car train service over an equivalent distance on the Virginia & Truckee Railway was found to be approximately one-third this amount.

Railroad local freight train equipment and service of to-day is obsolete. It is too slow for comparatively short haul less than car load freight and express service, and entirely too wasteful in its costs of operation under present methods. The average weight of train equipment and locomotives used will average approximately 25 tons per car and, while carrying capacity is in excess of 42 tons per car, the loaded weight for said local service will not average to exceed 7½ tons. It, therefore, may be noted that, in rendering this service, the load factor is only 18 per cent, and that there is, therefore, a nonproductive excess capacity of 82 per cent in the cars used, and further, that 3⅓ tons of dead weight, producing excessive operating cost, is employed in moving each ton of freight. This necessarily makes the less than carload service slow and costly, because of efforts to handle in connection with, and as other traffic in carload lots seem to justify; and entirely too costly if handled in separate trains in competition with direct auto line service.

The short line railroads complain that the auto trucks take from them what has heretofore been their exclusive high rate less than carload freight and express business, covering distances from 25 to 100 miles. But no solution is offered by them for the extended and cheaper transportation service afforded the public by the motor truck lines. Manifestly, the railroads through their well-established financial, operating and shop organizations, can establish motor car and trailer passenger, freight and express train services, which shall enable them to profitably retain to their lines much of the traffic that under present heavy and wasteful

steam train operations is being lost to the modern auto truck and stage lines.

Auto Truck and Stage Lines Exceedingly Valuable in Development of Agricultural, Livestock, and Mining Districts of Nevada.

Under established national and state policy, hundreds of millions of dollars are annually being raised and expended for highway development and improvements for the promotion of quicker and cheaper transportation to the people. In this behalf, it is estimated that the aggregate expenditures on highway construction to be made by the Federal, state, and county governments during the current year will be one billion dollars. Further, large capital is invested in the automobile industry, and, in consideration of the flexible and expeditious service which auto truck and stage lines render to the farmer, the mercantile shipper, and the traveling public, this improved transportation agency is meeting with deserved approval and encouragement, and it must, therefore, be recognized that it has come to stay.

It may also be noted, in passing, that the commercial shippers find the extended service afforded by the auto truck lines attractive and valuable for the reason that there is an added convenience and adaptability in shipments not heretofore furnished. It is largely free from boxing and packing regulations and from the trouble of billing and drayage, and it is also practically free from damage in transit and of delay in tracing lost and astray goods. This makes an impression on customers that thus far has not been afforded in any other way. The service in question has also grown to a point where it is strongly appealing to the farmer as well as to the commercial and retail trade interests. With the trucks of a motor freight and express line operating on daily schedule past his place on the way to markets in nearby cities, the farmer is beginning to ship to market his surplus milk, cream, eggs, garden products, etc., as economically, or more so, than by rendering the service himself. It is also found highly advantageous because the farmer does not need to give the time of himself or that of his employees to the transportation of his products to market, and he is thereby enabled to spend this time and energy in the more important work of raising additional and better crops and live stock for the market.

For the reasons stated herein, we believe it must be recognized that there is now an established field for both the railroads and the auto stage, truck, freight, passenger, express and mail lines. Further, that all of these agencies should for the future be established and regulated in the interests of the public service, and that this may be accomplished by the independent operation of each in certain section, and in others by the joint operation of the auto stage truck and railroad lines in proportion as the public necessity and convenience may justify.

The people of Nevada are opposed to laying any undue restriction upon auto transportation development and service and this is especially true throughout the agricultural, livestock, and mining sections of our state. The birth of many rich mining camps of to-day and for several years past has been, and is, synonymous with the potential possibilities and the services actually rendered by automobile transportation facilities. For example, rapid transit in Southern Nevada, during the mining development which began more than twelve years ago, was the paramount issue and the question of rates, convenience, and personal safety were minor considerations—necessity and time being the real factors of importance, as fortunes were at stake, and fortunes were being spent to make them. With these factors presented, it afforded an opportunity to the desert auto drivers to overcome obstacles mechanically and physically from a road negotiating standpoint, which, under ordinary economic conditions, would have been insurmountable. The knowledge gained by these automobile transportation pioneers and the standards called for in automobiles, auto trucks, and stages to meet these hazardous and exacting conditions have played an exceedingly important part in the present high state of development of the modern auto passenger and freight cars. Nevada has, therefore, contributed largely to the development of the automobile passenger and truck car standards of to-day and therefore, because of the increasing necessity for their use in developing our state, action should not be taken that will result in unreasonably restricting the important and growing value of this transportation agency.

Testimony Establishes Necessity for the Continued Operation of Both Railway and Auto Truck Services.

Under present railway operating conditions the testimony establishes that there is a clear and definite necessity for the continued operation of both the railway and the auto truck services under consideration in this case—the railway for the purpose of continuing its present high-grade passenger, express, and carload freight services between Reno and Minden, and the auto truck line for the purpose of according to the people of Gardnerville and points intermediate an extended less than carload freight service. In this behalf, it must be recognized that Gardnerville is fairly entitled to transportation service and that the same has not been, and is not now being, furnished by the Virginia & Truckee Railway. It must also be noted from the testimony of record that protestant is unwilling to take any steps toward retaining its diminishing earnings (which it claims the aforesaid automobile truck line is accountable for to some extent) by extending service to the town of Gardnerville and by the performance of terminal receipt and delivery service, which is being furnished by applicant. Further, from a service standpoint, applicant's complaint that, protestant's less than carload freight service between Reno and Gardnerville is inadequate, has been established by protestant's traffic manager, who testified that while less than carload shipments were moved and delivered daily (except Sunday) between Reno and Carson City, such shipments were moved into and out of Minden but two or three times a week (pp. 48–49, Record of October 11, 1919).

After full hearing and investigation of all of the issues raised in this proceeding, the Commission is of the opinion that the application of Ginocchio Brothers to operate an auto truck line freight service between Reno and Gardnerville, including points intermediate, should be granted, with the understanding that compliance with the law and rules and regulations of the Commission shall be strictly enforced for the future, including the filing of an indemnity bond of $10,000.

An order will be entered accordingly.

NEVADA PUBLIC SERVICE COMMISSION.

RE INTERURBAN TRANSIT COMPANY.

[CPC-217.]

Monopoly ana competition — Established investment nrotected — Railway — Automobile service.

1. A railway, which is established and has made a substantial investment, should be protected, and its equipment and service should be improved rather than permit competition by an automobile service.

Certificates of convenience and necessity — Automobile service.

2. The establishment of an automobile service within a municipality and from there to a pleasure resort, was authorized, where it appeared that no regular service was established between these points.

Monopoly and competition — Inadequate existing service — Railway — Automobile service.

Discussion of the desirability of establishing an automobile service between points where the existing railway service is totally inadequate, p. 488.

(SHAUGHNESSY, Chairman, dissents.)

[April 16, 1921.]

APPLICATION for a certificate of public convenience and necessity to operate an automobile service; certificate granted for part of the routes designated.

Appearances: Hoyt, Norcross, Thatcher, Woodburn & Morley, Attorneys, for the applicant; Frankie Daley, one of the own-

---

Note.—Bonds and Schedules.

General Ruling No. 3 of the Nevada Commission, Dec. 14, 1918, amending its resolution of May 29, 1917, provides that owners of automobiles engaged in the transportation of persons or property for hire along the highways of the state as common carriers shall file bonds with the Commission, together with tariff schedules and regulations governing such transportation, the order being applicable to owners of automobiles operated as common carriers on regular schedule between specified points, or holding themselves, employees or equipment, out for hire upon call to transport persons or property between various points in the state, such order being inapplicable to the owners of hearses, ambulances, taxicabs, automobiles, or autotrucks not operating as common carriers. (P.U.R.1919C, 922.)

ers, for the Moana Bus Company; E. J. Goodell, Attorney, for Reno Traction Company; J. W. Fulton, Assistant General Freight & Passenger Agent, for Southern Pacific Company.

By the **Commission**: This is an application for permission to operate an automobile service between Sparks, Reno, and Moana Springs, as well as within the city of Reno.

The Reno Traction Company, an electric line, now runs between Sparks and Reno, and the chief opposition to this application is based upon the competition that would exist between these two services. The present line has a monopoly of the business between Reno and Sparks, but it is evident that any substantial loss of patronage would tend to prevent this Commission from requiring the traction company to bring its property up to standard, and improve its service, including the possibility of total abandonment of the line, if the bus line company is allowed to enter the field.

[1] The established line has made a substantial investment which should be protected, and which we believe, if protected, will encourage it to keep its quipment and service up to an adequate standard.

The proposed line cannot hope to create a great deal of new business between the two cities, and there is not now enough travel to support both. We believe that the public will be better served by patronizing the line which has served it for years, and which will be compelled by the Commission to improve its service.

The application should be denied in so far as it refers to service between Sparks and Reno.

The applicant also desires to establish service within the city of Reno, and from that city to Moana Springs and the golf and aviation fields.

[2] Originally its application provided for a 5-cent fare within the city limits. After a hearing, a request was made for leave to amend by fixing such fare at 10 cents. Notice was given of the proposed amendment, and no objections have been offered thereto. A certificate should be issued, permitting service in Reno at 10 cents per passenger.

Moana Springs is a pleasure resort which is entitled to passen-

ger service. There is no regular service at present—two applications have been filed, but we see no substantial reason for preferring one to the other, nor do we know of any substantial reason why this applicant should not be permitted to establish this service.

An order will be entered denying the application as to service between Sparks and Reno, but permitting it within Reno, and between Reno and Moana Springs and intermediate points.

Shaughnessy, Chairman, dissenting: This applicant proposed the establishment of through service from Sparks to Moana Springs, via Reno, including service within Reno, and a transfer system providing service to the state university and other places in Reno, thus affording service which is not now furnished, as the electric line services have been abandoned between Moana Springs and Reno, and within the city of Reno, and there now remains only an interurban service between Reno and Sparks, furnished by the Reno Traction Company.

According to the testimony, the applicant showed that it is prepared to put in modern bus line equipment; that the Reno Traction Company has withdrawn its Reno city lines, and now operates only as an interurban line between Reno and Sparks, and therefore, could not be heard to complain against a superior intercommunicating line serving Reno, Sparks, and Moana Springs, the golf and aviation fields; that the public convenience and necessity is paramount; and that the operation of such a line would promote a largely increased travel to and from and within the city of Reno, and from all of the aforesaid outside points. The traction company opposed the application in so far as competitive operation with it between Reno and Sparks is concerned, but did not offer to supply, by extensions or bus lines, the service offered by applicant to Moana Springs, golf and aviation fields and the intercommunicating and transfer service within the city of Reno, by which through interchange service between Sparks and Moana Springs and the university of Nevada, and other sections within Reno and *vice versa* could be furnished.

Under these circumstances, I am of the opinion that the application should be granted with the provision that the Reno Traction Company should be permitted to maintain its present schedule of leaving Reno and Sparks on the hour and the half hour,

while the interurban Transit Company should be restricted to depart from Reno and Sparks on the quarter and three-quarter hours, and to cover the balance of the territory, within and outside the city limits of Reno, as aforesaid.

There is no testimony of record that the operation of this bus line would cause the Reno Traction Company to discontinue operations.

For these reasons, I am unable to concur in the decision of the majority.

NEVADA PUBLIC SERVICE COMMISSION.

RE VIRGINIA CITY-AMERICAN FLAT STAGE COMPANY.

[C. P. C. 257.]

Monopoly and competition — Auto busses — Permit unrestricted.

An auto stage company, seeking a permit to operate between certain points where there is no railroad service, should not be limited to operation until such a time as a nearby railroad should see fit to extend its service over the same route.

[August 19, 1921.]

APPLICATION for a certificate of public convenience and necessity; granted.

Appearances: W. T. Oliver, R. E. Peek, copartners, for the Applicant; F. E. Murphy, Vice President, S. C. Bigelow, Secretary, for protestant, Virginia & Truckee Railway.

By the **Commission:** This is an application for an automobile passenger service between Virginia City, American Flat, and intermediate points. The principal object appears to be to furnish service to and from the mines at American Flat and Gold Hill.

It appears that many of the workmen at the latter places live at Virginia City, which is 3 miles from American Flat. It is shown that the superintendent of the United Comstock Mines Company at American Flat desires such service as is here offered. The three points mentioned are served by the Virginia & Truckee Railway, which protests this application, and which operates two trains a day each way, but neither of them at the time which would be most convenient to the miners. No railroad passenger service is now being furnished to American Flat, the nearest station being Knickerbocker, about one and one-half miles distant, or half the distance from Virginia City. It is suggested that

this company may establish additional service when the traffic increases sufficiently to warrant, but there appears to be no immediate or definite plan along this line. It is suggested that if this certificate be granted, it be made subordinate to such application as might hereafter be made by the railroad.

It appears from the record that the proposed service is a public necessity and that a certificate should be issued. As to whether the usual certificate should be issued, or one subject to termination on the application of the railroad for additional service, deserves some consideration.

It has been the policy of the Commission, and we believe, the policy of the law, to protect investment in public utilities, and the railroad has, unquestionably, made a large investment. This general principle is subject to the exception that improved service may be permitted, regardless of competition, unless the established utility is ready, willing, and able to adopt the improvement. (In Re Ginocchio Brothers, C. P. C. 28, P.U.R.1920B, 325.) The protestant admits that the proposed service will be an improved service, on account of the frequency of the trips to be made, and it does not offer to meet the proposed schedule at this time, nor is there a definite offer ever to meet it.

It is the investment of the pioneer that deserves protection. It would hardly be fair to permit the stage company to build up a substantial service, to be turned over bodily to the railroad, at any time the latter desired it. It could not be expected that a company would be liberal in buying equipment for a service that might be terminated at any time, and we do not believe that such a temporary certificate, as is being discussed, would afford satisfactory service.

Based on the facts in the case, a certificate of public convenience and necessity should be issued.

While, in this instance, the full service intended may be prevented thereby, we adhere to the rule long since adopted, that a new line must keep off the passenger time-schedule of a competing railway, by one hour.

An order conforming to this opinion will be entered.

NEW HAMPSHIRE PUBLIC SERVICE COMMISSION.

RE HARRY HURLICK et al.

[J-10.]

Monopoly and competition — Street railways — Jitneys.

Until the superiority of automobiles to street railroads has been demonstrated on routes not already served, it is clearly not for the public good to allow them to drive street railroads out of business and substitute therefor a much inferior and less desirable class of service.

[June 19, 1919.]

APPLICATION for permission to transport passengers for hire in motor vehicles between Dover and Somersworth; denied.

Appearances: Sidney F. Stevens, for the petitioners; George T. Hughes, for the Dover, Somersworth, & Rochester Street Railway in opposition.

Gunnison, Commissioner: This is a petition by Harry Hurlick et al. for permission to transport passengers for hire in motor vehicles along the highway between Dover and Somersworth in the state of New Hampshire. In other words, the petitioners wish to operate what is commonly called a jitney line between Dover and Somersworth. They propose to run along the exact route of the street railway between the two points named.

A hearing was held at Somersworth on May 9, 1919, at which the petitioners appeared with counsel and testified in support of their petition. They offered evidence to prove, and we find the facts to be, that they were induced to go into this line of business in March of the present year because the street car service for about three months previous thereto had been very unsatisfactory to the citizens of Somersworth and Berwick. Berwick is a town in Maine just across the river from Somersworth. At that time there was nothing in the law to prevent the running of jitneys, and the petitioners, after taking legal counsel, expended in good faith about $7,000 to purchase three auto busses for this purpose.

The jitneys from the first proved to be very popular. They averaged to take in from $350 to $400 per week. They carried

passengers between Dover and Somersworth for 10 cents each, while the electric railroad fare between the same points is 15 cents. It was the practice of the jitneys to stop beside the street car, and a few minutes before it was time for the street car to start, the jitney would begin its journey taking usually all the passengers and leaving the car to begin its journey empty. Practically the whole of the jitney patronage was diverted from the street railway, and their competition was a great financial injury to the electric road.

Within a few weeks after the petitioners started this jitney service in March, the legislature, which was then in session, passed an act regulating the operation of jitneys and making their operation unlawful unless they first obtained a permit from the Public Service Commission. The act provides as follows: "No such person, firm or corporation shall conduct the business defined in § 1 of this act along any portion of a public highway unless upon petition and public hearing thereon the Public Service Commission shall determine that the public good requires that such person, firm or corporation should engage in such business and shall have granted permission therefor."

The street railroads of the state were especially active in getting this legislation passed, and the president of the Dover, Somersworth, & Rochester Street Railway Company, which road owns and operates as a part of its system the street railroad line between Dover and Somersworth, appeared as an advocate of this bill before the legislative committee of the house and before the senate. In his argument in favor of the bill, he called the senate's attention to the injurious effect the petitioners' jitney competition between Dover and Somersworth was having on the revenues of his road. In fact, the principal argument advanced why this bill should pass was the necessity of preventing jitney competition with street railroads.

If any significance is to be given to the purpose for which this act was passed, it would seem as though this is the typical case where it is not for the public good to have jitney service. We mention this because the history of this legislation was brought out at the hearing by the counsel for the petitioners. He stated that the people of Somersworth resented the efforts made by the street railroad to get a bill passed to prevent the petitioners from

operating their jitney line, and because this interest was taken by the president of the road in favor of the Jitney Act, he argued that jitney service between Dover and Somersworth should be allowed.

We cannot adopt this line of reasoning. In our judgment the railroad was perfectly justified in doing what it did do in favor of this legislation, because it was so vital to its financial interest. If its officers had not done anything to assist the passage of this jitney bill they would have been derelict in their duty.

At the hearing in Somersworth no one appeared in opposition to the petition except the street railroad. Upon the other hand, a petition signed by over fifteen hundred inhabitants, including the mayor of Somersworth and other city officials, the postmaster at Somersworth, prominent bankers, professional and business men of both Somersworth and Berwick, asking that the jitneys be allowed to run, was filed with the Commission. The evidence before the Commission is overwhelming that the sentiment in Somersworth and Berwick is very favorable to the jitneys and very hostile to the street railroad.

At the request of the Commission that some of the many prominent men on this petition appear and state their reasons for being in favor of the jitney service, the mayor and postmaster testified. Both said they believed that the jitneys should be allowed to run because of the very poor and unsatisfactory service given by the street railway the first part of the winter of 1918–1919. They admitted that the street car service at the present time, and in fact since about the time the jitneys began to run in March, has been good and is now perfectly satisfactory. This good service, however, they attribute to the jitney competition, and give it as an argument why this petition should be granted.

On the other hand, the officials of the railroad testified that the jitney competition had nothing to do with the improved service as some of the changes were made at the suggestion of the Public Service Commission and others were made because they wished to please the public.

The question of street railway service is not at issue now as it is satisfactory. But, as expressed by the mayor, the people of Somersworth are exceedingly "sore" because they feel that the

road has misused them. In his opinion the good service Somersworth had always enjoyed prior to this past winter was diverted from Somersworth to that portion of the system operating in Rochester. There was nothing to substantiate this claim. In fact, Rochester is getting the same service now that it received when Somersworth claimed its service was poor. The fact that Somersworth is receiving the same service now that it received before the change last winter shows conclusively that it was not necessary to give Somersworth inferior service in order to improve the Rochester service. Moreover, the president of the electric road testified that the change from half hourly to hourly service between Somersworth and Dover, which is the principal thing the Somersworth people complain about, was introduced in the interest of economy, and that the service at Rochester had nothing to do with the change. The sworn testimony of Mr. Belden, the president of the road, carries much more weight with the Commission than the mere surmise of a witness, unsupported by any evidence.

Whether the people of Somersworth are reasonable or unreasonable in their attitude towards the railroad does not alter the fact that they are "sore" and apparently indifferent as to its success or failure. They are in such an inflamed state of mind that they have nothing good to say for the road, and some even go so far as to say that they would not object to having the tracks taken up. We cannot believe, however, that this is the conviction of those who have given the matter intelligent thought. In fact, the mayor admitted on the witness stand that if it is a fact that the public cannot afford to support both the jitneys and street cars, it would be for the public good to continue the street railroad rather than the jitneys.

The evidence is convincing that the loss of revenue to the railroad due to jitney competition during the short time they operated was very disastrous. It threatened the very existence of the road, and if continued would inevitably lead to either much higher rates or bankruptcy. The company lacked $5,000 of earning its $7,500 bonded interest for the six months ending January 1, 1919. This $5,000 was borrowed on the personal assurance of Mr. Belden, its president, that the loan would be paid out of earnings from the summer travel. Diverting from

the road $350 to $400 of traffic per week to the jitneys will, if continued, so cripple the road that it is very probable that it will not earn the interest due on its bonds next July in addition to the $5,000 borrowed to pay the January bond interest. It is exceedingly doubtful whether the revenues can be increased by raising the rates, as the rates now are about as high as the public will stand. This experiment, however, may have to be tried unless there is an improvement in its revenues, but it would not be surprising if higher rates would cause such a reduction in travel that the return to the road would be less instead of more than it is now under existing rates.

This road has never paid a dividend to its stockholders. Its bonded indebtedness is $300,000 and its outstanding stock is $375,000, all of which has been issued under governmental authority. There is no evidence that the road is not operated economically and efficiently. It is well equipped and willing to accommodate all the travel that the territory served by it will furnish.

It is to be borne in mind, however, that this is not a question between the owners of the railroad and the owners of the jitneys, The real question is, What is for the public good? If it is better for the public to have the jitney service even though it will result in a large financial loss to the owners of the railroad property, this petition should be granted. The financial interest of the railroad cannot be allowed to stand in the way of public interest.

If it were a fact that Somersworth and Berwick embraced all of the public affected by this request for jitney service, and that they signed this petition for such service fully comprehending what the effect would be upon the street car service if the jitneys were allowed to run, it could be argued with much force that it is for the public good that this petition be granted. This would be upon the theory that the community served should be allowed to determine for itself the kind of service it should have.

It would be an unpleasant duty for the Commission, by its denial of this petition, to intimate that the people of Somersworth do not know what is best for them. But we do not believe that those signing this petition in favor of jitney service intended to convey the impression that they would prefer the jitney serv-

ice to the street railway. They did not contemplate that the railroad might have to discontinue operations entirely if the jitneys continued. Had they realized that this would be the effect, many of them would not have signed the petition. In fact, we believe the mayor expressed the sober judgment of the Somersworth people when he admitted on the witness stand that if the jitney service would result in putting the railroad out of business, it would not be for the public good to have the jitney service.

There is no evidence as to what the sentiment is in Dover about the jitneys. Rochester citizens, since the hearing at Somersworth, have filed a protest against the jitney service, on the ground that it will injure the street railroad.

This street railroad, known as the Dover, Somersworth, & Rochester Street Railway, is operated as one system, connecting the three cities of Dover, Somersworth, and Rochester. What effects its revenues in one section is felt over the whole system. So, in passing upon this petition, the Commission must consider what will be the effect, not only upon Somersworth, but also upon Dover and Rochester.

It becomes necessary then to decide this case according to what the Commission finds to be for the public good. The fundamental question involved is whether or not competition in the utility field is desirable. It is generally, if not universally, held now by all regulatory bodies that such competition is not for the public good. Regulation takes the place of competition. The utility or railroad is under a legal obligation to furnish reasonable service at a fair price, and it is the duty of the Public Service Commission to see that this is done. If it is done, no reasonable person can complain. So, in this case, if the Somersworth citizens were dissatisfied with the service they were getting, their remedy was to apply to the Public Service Commission for relief. This was never done. The Commission did, in a roundabout and indirect way, learn that the service was not altogether pleasing to the Somersworth people, and the Commission informally took up several such matters with the railroad officials and suggested certain changes. All of our suggestions were speedily complied with, and the Somersworth people now admit that the present service is entirely satisfactory. It would seem as though

the Somersworth complaint has been easily adjusted, and the "soreness" that still remains is hard to comprehend. It is not necessary to pass upon the reasonableness of the hourly service established last winter between Dover and Somersworth. It might be said, however, that the road needed to keep its operating expenses as low as possible, and if it thought it could accommodate the people with hourly service it was its plain duty to try it out, and it was likewise the duty of the public to co-operate with the railroad and adapt itself to this hourly service if it could reasonably do so.

The public must not expect any better service than it is willing to pay for. They cannot get something for nothing. It is as much the duty of the public to give a railroad its support as it is for the railroad to give the public good service. The public and the railroad's interests are identical, and they should co-operate as partners, and not antagonize each other as rivals. Prosperity to the railroad means better service to the public. As prosperity depends directly upon public patronage it can readily be seen that no one is acting in the public interest by diverting patronage from the street railway or public utility serving it. So in this case, if it is in the interest of the public to have the street railroad continue to run, and it is able and willing to take care of all the travel in the territory served, as we find it is able and willing to do, it is not for the public welfare to have the service duplicated. The public must in the end pay the bill. If it has both jitney and street car service, it must pay more than it would if it had only one kind of service. The reason for this is that the two services cost more than one service, and there being no other source of revenue, the public must settle. It follows that it is certainly not for the public good to take on the support of a jitney line if the railroad is to continue in operation.

If, on the other hand, the jitneys are capable of furnishing a class of service equal to the street railroad service for a lower price, or of furnishing superior service at the same price, then it is for the public good to permit the jitneys to operate even if it results in bankruptcy to the railroad. The street railroad must not be allowed to stand in the way of progress. But the history of jitneys in New Hampshire and elsewhere does not

indicate that their service is so reliable, comfortable, or desirable for all seasons of the year and all kinds of weather as that of street railroads. While the petitioners claimed at the hearing that they were prepared and willing to maintain half hourly service between Dover and Somersworth every day in the year, yet the Commission, relying upon its common knowledge of automobiles and the rigor of New England winters, is convinced that there would be times during the winter when the highways would be so blocked with snow that they would be impassable for automobiles. Upon other days when the thermometer registered around zero, it would be impracticable to operate an automobile, and if the petitioners should succeed in running at all during such extreme cold weather, they could not maintain a regular schedule, and very few, if any, passengers would ride with them if they did. Beyond question, during the cold weather the well-heated and well-lighted electric car furnishes a much more comfortable and desirable mode of transportation than can be furnished by the jitney. Again, the street railroad is much better equipped for rainy weather than are the jitneys. The jitney is a fair weather service, and not suited for all kinds of weather and seasons of the year.

Then as to cost of the service. The petitioners claim they can make money carrying passengers for a 10-cent fare between Dover and Somersworth. This is 5 cents cheaper than the fare on the electric road. With all due respect for the petitioners' judgment, we are sceptical of their ability to maintain this rate if they make the same number of trips each day that the electric cars make. In making a rate schedule the basis must be the average number of passengers per trip, and not the maximum. There would necessarily be a great many trips in the course of the day on a half hourly schedule when the travel would be light even in warm and fair weather. When the weather proved to be cold or rainy the travel would be still lighter. Upon a 10-cent fare the jitney would lose money on such trips. It is our judgment that if the petitioners were allowed to operate their jitney line, it would be only a short time before they would be asking to increase their rates, or go out of business. Then the public would have had their jitney experience and would pay the penalty.

There is, however, a broad field for jitney service in New Hampshire. Over any route not already served the jitneys will be welcomed. Let them prove their worth by first rendering a real public service in such communities. If they can demonstrate in this way their superiority to the street railroad, it will clearly be for the public good to permit them to operate in competition with them. But, until they have proved in this way their superiority, it clearly is not for the public good to allow them to drive the street railroads out of business and substitute therefor a much inferior and less desirable class of service.

For reasons stated we do not find it for the public good to grant this petition, and it is accordingly denied.

Worthen and Storrs, Commissioners, concur.

Note.—In Re Public Auto Asso. April 28, 1919, P.U.R.1919E, 151, the New Hampshire Commission authorized a Company to operate motor vehicles in a city, although such operation would necessarily result in competition with an existing street railway company giving as good service as it could give, where it appeared that the motor vehicles would furnish transportation to a large number of people who could not patronize the street railway company because of the circuitous route taken by its tracks.

Chairman Gunnison, however, said: "If one mode of transportation will accommodate the public, then to take on more than one is an unnecessary burden and a luxury that the public can ill afford. To the unthinking it appears logical to say the more means of travel a community has, the better it is served." But, continued the commissioner, if the public is unwilling or cannot afford to pay the expense necessary to maintain more than one carrier, it is not for the public good that it be served by two.

NEW HAMPSHIRE PUBLIC SERVICE COMMISSION.

RE LUCIEN ROUSSEAU.

[J-39.]

Monopoly and competition — Occupied territory — Jitneys.

1. An association of jitney operators giving adequate service at reasonable rates should be protected from competition.

Service — Automobiles — Sufficiency.

2. The mere fact that some passengers are not accommodated by

jitney service does not justify the admission of competition, since this may happen occasionally even though there are in use enough cars to carry the average rush-hour crowd.

[November 26, 1919.]

PETITION for authority to operate a jitney along certain highways in the city of Manchester; denied.

Appearances: T. J. Bois, for petitioner; O. J. Moreau, for the Public Auto Association of Manchester, in opposition.

Gunnison, Chairman: The petitioner in this case asks for authority to operate a motor vehicle or motor vehicles for hire in the city of Manchester over the same route upon which the Public Auto Association of Manchester operates a jitney line under authority granted to it by this Commission on April 28, 1919, Re Public Auto Association, P.U.R.1919E, 151. See 7 N. H. P. S. C. 112.

The Public Auto Association is a partnership consisting of seven individuals, each of whom owns a Ford automobile which he operates as a jitney. During the rush traffic periods in the early morning, at noon, and at night, it is necessary to run all of the seven cars to accommodate the public. Between these periods the travel is light, and one car can usually take care of all the business. The running time is every thirty minutes, except during rush hours, when a fifteen-minute schedule is maintained.

By an arrangement among themselves the members of the association take turns in maintaining the thirty-minute schedule. There is not business enough to pay one to run regularly every fifteen or thirty minutes all day, but under the arrangement named each member of the association is making a fair return. This being so, it is evident that the public is being served more economically than it would or could be if each jitney owner operated independently. It is, of course, for the public interest to receive service at the lowest possible cost. Therefore, the plan adopted by the association is a good one and should not be disturbed until a better one is found.

[1] Moreover, so long as the association is giving adequate service at reasonable rates it should be protected. As we have stated in previous cases, competition among utilities and com-

mon carriers under state regulation is no longer desirable where the service rendered is adequate and the rates are reasonable.

[2] The public has made no complaint about the service it receives from the association. At the hearing the petitioner claimed that he knew of some passengers who were not accommodated. This may happen occasionally even though there are in use enough cars to carry the average rush-hour crowd. These rare occasions cannot reasonably be avoided. Upon the other hand, the association says that when there is travel enough to warrant another car they will put one on.

Under the circumstances we do not find that it is for the public good that this petition be granted, and it is accordingly denied.

Worthen and Storrs, Commissioners, concurred.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

RE WAYSIDE TELEPHONE & AUTO SERVICE COMPANY.

Public utilities — What constitute — Automobile service.

An auto service company designed to render service to motorists along the highways, which has not obtained some privilege from the state or subdivision thereof, is not a public utilty within the meaning of the New Jersey statutes.

[December 16, 1920.]

APPLICATION for permission to issue securities; denied.

Appearances: Howard Lambert, for the company. Hearing at Newark, N. J., Nov. 23, 1920.

By the **Commission**: The Wayside Telephone & Auto Service Company is a foreign corporation incorporated under the laws of the state of Delaware with an authorized capital stock of $1,000,000 divided into 100,000 shares of the par value of $10 each. The petition of the company sets forth that it proposes to acquire rights of way along the Lincoln Highway and other principal thoroughfares in New Jersey and install telephones and telephone boxes about a mile apart between the cities along such highways. At the present time, it owns no property in this state, nor has it secured any franchise from the state of New Jersey or any political subdivision thereof.

"The company requests authority to issue, sell, and deliver in the state of New Jersey 6,000 shares of the common stock, as its engineers have estimated that the proceeds from the sale of the 6,000 shares will be sufficient to install its service along the principally traveled highways in New Jersey and to maintain the service for the first year."

The president of the corporation testifying before the Board stated that the project is similar to that conducted by the Royal Automobile Club of England whereby there are service stations along a traveled highway of auto vehicles at intervals of 10 miles, connecting these service stations with telephones. Mechanics ride the highways on motorcycles equipped with machinery and tools for ordinary road repairs and if a motorist is in trouble or disabled along the road he gets in connection with one of the service stations by telephone, or if a motorcycle patrol happens to be passing at the time he gives the necessary assistance.

The witness further testified that it is the purpose of the company to do its business over the lines of the existing telephone companies, that the telephone companies will furnish the desired service to the Wayside Telephone & Auto Service Company as a private subscriber and that there are negotiations pending with the New York Telephone Company and other telephone companies to furnish such service but no agreement has been reached with them.

The testimony before the Board is vague and indefinite. Until the petitioner acquires some privilege from the state of New Jersey or some political subdivision thereof, it does not come within the term "public utility" as defined by our statute.

The petition is dismissed.

Board of Public Utility Commissioners (signed) John W. Slocum, President, George F. Wright, Andrew Gaul, Jr., Harry L. Knight.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

RE CARL A. BECKER.

Automobiles — Power of Commission — New Jersey.

1. The New Jersey Commission has no jurisdiction or control over jitneys licensed and operating over the routes traversed by them on and prior to March 15, 1921, on which day the public utility act was amended, but it has jurisdiction over a jitney licensed by a municipality and operating prior to that date, but transferred since that date to a new owner.

Automobiles — Duty of Commission — Legislative intent.

2. It is the intent of the New Jersey legislature that the operation of jitneys be encouraged, and the Commission will give due consideration to that fact in granting permits to operate.

Certificates of convenience and necessity — Automobiles — Local consent as precedent.

3. The New Jersey Board has no jurisdiction or power to grant a certificate of convenience and necessity for the operation of a jitney in a city except after permission has been granted by the municipality.

Automobiles — Jitney bus — Authority required.

Statement that jitneurs must receive Commission authority after receiving municipal licenses before having right to operate, p. 504.

[June 13, 1921.]

APPLICATION for permission to operate an auto bus; application granted.

Appearances: George F. Seymour, Jr., for petitioner; L. D. H. Gilmour and E. W. Wakelee, for Public Service Railway Company.

By the Commission: This is an application for the approval

Note.—Prohibitive License.

A provision of an ordinance requiring those operating any self-propelled vehicles carrying passengers for hire to pay additional licenses of $300 to $400 before being permitted to solicit or receive passengers on the paved portions of certain designated streets, although practically prohibitive as to such designated places, is a valid exercise of municipal control; that the effect of such ordinance, if enforced, would involve a benefit to the street railway company is no reason why the city may not prescribe such regulations. Desser v. Wichita (1915) 96 Kan. 820, L.R.A.1916D, —, 152 Pac. 1194.

by the Board of a license granted to the applicant to operate an auto bus, commonly known as a jitney, over a route, part or all of which is also the route of a street railway line.

The bus, for the operation of which approval is asked, was duly licensed by the cities of Newark and Orange and the town of West Orange prior to March 15, 1921, between the city of Newark and the town of West Orange in Essex county, such licenses having been granted to the then owner, who continued to operate it after that date but who has since transferred his bus to the applicant. The latter now makes application for our approval for the operation of said bus in accordance with the consent of the municipalities granted to him since March 15, 1921. If the permission requested be granted by this Board, it will not increase the number of busses that were in operation on the route in question before March 15th, but should permission be refused the number of busses in operation on that route on March 15th will be diminished.

Such jurisdiction as the Board has over the matter of jitney regulation is conferred by Chapter 149 of the Laws of 1921 which is an amendment to § 15 of the Public Utility Act of 1911. It provides that the term "public utility" shall, in addition to the utilities described in the Public Utility Act of 1911, include every "auto bus, commonly called jitney, the route of which in whole or in part parallels upon the same street the line of any street railway or traction railway." By amending act also a second paragraph is added to § 15 of the Public Utility Act as follows:

"2. Nothing herein contained shall extend the powers of the Board of Public Utility Commissioners to include any supervision and regulation of, or jurisdiction and control over, the operation of any auto bus, commonly called jitney, over its present route, under and in accordance with the consent of the municipal authorities granted therefor prior to March 15, 1921, by the owner of such consent on said date, or under and in accordance with the renewal of such consent granted to such owner as aforesaid, for further operation by him, upon the expiration of the time limit set forth in such consent."

[1] The language of paragraph 2 clearly indicates that the legislature intended that the Board should have no jurisdiction

or control over any jitneys licensed and operating over the route traversed by them on and prior to March 15, 1921, but that such jurisdiction and control should be had and so exercised by the Board only as to jitneys and owners of jitneys licensed after March 15th to operate on routes on which a street railway line exists. One question here presented is whether or not the Board has jurisdiction over the case of a jitney licensed by the municipality and operating prior to March 15th but transferred since that date to a new owner. The Board is of the opinion that it has jurisdiction over such cases.

[2] In the exercise of its judgment, however, upon such applications, the Board will give due consideration to what it considers the legislative policy and intent with regard to the limitation or curtailment of the jitney system of transportation. The express exclusion from the jurisdiction and control of this Board of such jitneys as were in operation on the 15th of March, 1921, would seem to indicate that not only should the holders of licenses to operate jitneys be protected in the privilege theretofore granted to them but that the legislature was satisfied that the public convenience and necessity required the number of jitneys that were in operation on that date. We think it must be assumed therefore, that the legislature was not in favor of the curtailment of the jitney transportation facilities as such facilities existed on March 15th, but had in mind the regulation and control of any increase of it in so far as the increased number of jitneys occupied street railway routes and competed therewith. Our opinion in this respect is based upon not only the second paragraph of the Act of 1921 but also upon the previous history of jitney legislation in this state. That the legislature regards the jitney system of transportation as a proper one and required to serve the public, is apparent not only from the fact that it refused to curtail the amount of such transportation in the Act of 1921 as the same existed on March 15th but also from the fact that it has been enacting laws since 1916, the effect of which has been to give the jitney, which prior to the year 1916 was without legislative recognition, the authority and sanction of the law in the same manner as every other system of transportation. The Act of 1916, Chapter 136 (P.L. 283), defines the auto bus, known as the jitney, and prohibits operation of it in

any city until the owners shall have obtained consent of the body having control of public streets therein and until an insurance policy in the sum of $5,000 against loss from liability of the owner of such jitney or person of injuries occurring by reason of the use of such bus upon the public streets. It further provided for the filing monthly of statements of the gross receipts from the business of said jitney and the payment to the city treasurer of said city of 5 per cent of said gross receipts as a monthly franchise tax and penalties were provided for the failure to comply therewith. In 1917 an act was passed to regulate the operation of jitneys in fourth class cities. By Chapter 89 of the Laws of 1920, the governing body of every municipality is given power to pass ordinances to license and regulate jitneys and their owners and fix the fees and prohibit the operation of jitneys unless such ordinances are complied with.

The legislature, therefore, has made the subject of jitney transportation a matter of legislation at various times since the year 1916 and the legislation which it has enacted in regard thereto sanctions the jitney system and establishes it as a legislatively authorized method of transportation. Nowhere in any of such legislation is there discernible any intent to curtail the amount of jitney service except in so far as the power given to municipalities to license and regulate can be inferred to express such intent.

There are, therefore, in many cities of the state, two systems of street transportation, the electric railway and the jitney, recognized by and enjoying the equal sanction of the law. Indeed, if either system can be said to be favored by the legislature, it would seem to be the jitney because while the legislature has placed all street railways under the jurisdiction of this Board, it has expressly refused to place jitneys licensed before March 15th of this year and operated over their April 6th routes, by limiting its power of regulation solely to such as should be licensed after March 15th.

The Board is but an instrument of the legislature and should endeavor to carry out the legislative intent as determinable from the legislative acts.

The policy of the Board in applications presented to it will be to approve all licenses or permits granted by the municipalities

in renewal or substitution of all licenses or permits existing prior to March 15th unless it can be affirmatively shown that conditions pertinent to the consideration of the necessary factors have so changed as to make either an increase or decrease in the number necessary.

In the present case, as already indicated, however, the granting of the application would not add to the facilities existing on the route in question on March 15, 1921. Mr. Joseph Crawford, who has charge of the licensing and operation of jitneys in the city of Newark, testified that in his opinion the exigencies of travel justified a continuance of the number of jitneys in operation on March 15, 1921; he further testified that the city officials had made a survey of the jitney situation on this route and had determined that the number of jitneys required by public convenience was 35. As above stated, the approval of the substitution asked for in this case will not increase that number. Considerable other testimony was introduced both by the applicant and by the Public Service Railway Company. Considering all of the evidence and having in mind the legislative intent as expressed by the enactments above referred to, the Board is of the opinion that the application should be granted.

An order will, therefore, be entered in accordance with this determination, granting to the applicant a certificate of public convenience and necessity.

The Board takes this occasion to state its view with regard to the method of procedure in applications for the Board's action on jitney licenses. There seems to be a misapprehension on the part of some municipal officials, as well as the jitneurs, as to whether the initiatory step should be made by application to this Board or by application to the municipality. Such jurisdiction as the Board has is conferred by § 24, Chapter 195 of the Laws of 1911, the act creating the Board. This section provides:

"24. No privilege or franchise hereafter granted to any public utility as herein defined, by any political subdivision of this state, shall be valid until approved by said board, such approval to be given when, after hearing, said board determines that such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests, and the Board shall have power in so approving to impose such condi-

tions as to construction, equipment, maintenance, service, or operation as the public convenience and interests may reasonably require."

[3] It is apparent, therefore, that this Board has no jurisdiction or power to act except upon a privilege, franchise or license granted by the municipality. It is only after such grant by the municipality that the Board can act and the question then before the Board is whether or not it shall decide that such privilege or franchise is necessary or proper for the public convenience and properly conserves the public interest.

The Board at this time deems it appropriate also to state, for the information of jitneurs who may have received municipal licenses but who have not had such licenses approved by the Board, that such licenses are invalid without the Board's approval and that attempts to operate under such licenses without application on the part of the holders of such licenses made to and approved by this Board are illegal.

Dated June 13, 1921.

Board of Public Utility Commissioners, John J. Treacy, President, Harry V. Osborne, Harry Bacharach.

Note.—The operation of a bus line between two cities, in competition with another common carrier, and without the consent of the local authorities of the two cities, and without a certificate of public convenience and necessity from the Public Service Commission, is unlawful. Public Service Commission v. Mt. Vernon Taxicab Co. (1917) 101 Misc. 497, 168 N. Y. Supp. 83. (P.U.R.1918C, 320.)

An owner of a vehicle or vehicles operating a motor vehicle line or route or operating a vehicle carrying passengers in competition with another common carrier, is required by law to obtain the consent of municipal authorities before operating over city streets and operation without such consent will be enjoined by the courts. United Traction Co. v. Smith, P.U.R.1922A, 643, 187 N. Y. Supp. 377.

Note.—Preventing Unlawful Operation.

A person unlawfully operating a motor vehicle may be enjoined from such operation, although the regular remedy for the prosecution of such an offence would lie in arrest and punishment, since the court will not compel parties whose rights are clear to rely on peace officers to protect them in their enjoyment of those rights. United Traction Co. v. Smith, supra.

Note.—Slight Competition.

In Re Woodlawn Improv. Asso. Transp. Corp. March 16, 1916, P.U.R.1916D, 1, the New York Commission held that there was no improper competition with a street railway by an auto bus line operating on a part of its route over a street on which the railway did not propose to build a line in the near future, and which was from 2500 to 4000 feet from the nearest railway line, and operating with but few passengers on the remainder of the route over streets traversed by or near railway lines.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

PETITION OF WILLIAM B. GRAY.

[No. 231; Case No. 5138.]

Certificate of convenience and necessity — Application — Questions not decided.

1. Technical questions concerning the validity of a franchise to operate an auto bus system in a city, such as the effect of insufficient publication of the notice of public hearing and the grant of the right to operate over routes not mentioned in the notice, will not be decided by the New York Commission of the second district upon an application for a certificate of convenience and necessity, where the franchise is not obviously defective.

Monopoly and competition — Motor bus routes — Indirect conflict with street cars.

2. Routes for the operation of motor busses in a city that do not directly conflict with existing street car lines do not violate any right of the latter to protection from wasteful competition under the New York Public Service Commissions law, although the busses will take traffic from the street cars by furnishing direct transportation to a large number of persons who have had no direct facilities.

Monopoly and competition — Motor bus routes — Slight paralleling of street car tracks.

3. The paralleling of street car tracks for a short distance by a proposed motor bus route in a city is not a ground for refusing to permit the establishment of the route, where the paralleling is but incidental and unavoidable and the route as an entirety avoids direct competition with the car line.

Monopoly and competition — Motor bus routes — Pleasant mode of travel.

4. That it may be more pleasant to travel in a motor bus than in a street car, or *vice versa*, will at least be given some weight in passing upon an application for a certificate of convenience and necessity for the operation of a motor bus system in a city in which street cars are operated.

Monopoly and competition — Motor bus routes — Entire paralleling of street car tracks.

5. Public necessity was held not to require the establishment of motor bus routes parallel to existing street car lines, upon the same streets, practically throughout their entire length, where the population in the portions of the city penetrated is not particularly dense, and the sections are inhabited largely by well-to-do people maintaining automobiles, although the routes would be a convenience.

Monopoly and competition — Motor bus routes — Conflict in duties — General policy of Commission.

6. The duty of the New York Commission, under the Public Service Commissions law, to protect the existing investment of transportation companies from wasteful competition, must be subordinated to the primary duty to the public, if they conflict upon an application for a certificate of convenience and necessity to operate a motor bus system in a city in which street railways operate.

[October 20, 1915.]

PETITION of William B. Gray, under chapter 667 of the Laws of 1915, for a certificate of convenience and necessity for the operation of a stage route by auto busses in the city of New Rochelle; granted in part.

Appearances: Thomas Gilleran for applicant, William B. Gray; E. A. Maher, Jr., assistant general manager, and William B. Wheeler, superintendent, the Westchester Electric Railroad Company.

M. G. Gonterman for the New York, New Haven, & Hartford Railroad Company; Edward Stetson Griffing, mayor of the city of New Rochelle; Edward W. Davidson, corporation counsel; Frank Fallon, assistant corporation counsel, city of New Rochelle.

Rev. Dr. Canady, rector of Trinity Church, New Rochelle, William R. Pitt, H. S. McCormic, H. R. Ware, and James S. Hall, New Rochelle, citizens interested.

Emmet, Commissioner: The application of William B. Gray for a certificate of convenience and necessity for the operation of a motor bus system in the city of New Rochelle is the first of its kind to come before us for decision under chapter 667 of the Laws of 1915. This statute, passed during the closing days of the last legislature, confers upon municipalities and upon the Public Service Commissions representing the state as a whole, certain new powers over the operations of motor busses

carrying passengers for 15 cents or less within the limits of cities. Upon the Public Service Commissions it imposes the duty of determining in each case—after a municipality shall first have granted a franchise—whether the facts and circumstances are such as to warrant the issuance of a certificate of convenience and necessity by the Commission. The considerations to be taken into account in determining this point are, as we understand it, precisely the same as those which the Commissions have always heretofore had to observe in connection with other kinds of public utility enterprises seeking the privilege of organizing and of doing business lawfully, in New York state. Without this certificate, no motor bus system may lawfully operate in any of our cities.

[1] The applicant in the present case has already acquired a franchise from the local authorities. The Westchester Electric Railroad Company, who appear in opposition to the granting of a certificate of convenience and necessity to Mr. Gray, contend that what Mr. Gray obtained from the municipal authorities of New Rochelle is not a valid franchise, because notice of the public hearing which was had in New Rochelle, prior to the granting of the franchise, was not published daily for fourteen days in the New Rochelle newspapers, and also because the franchise as finally adopted prescribes certain streets over which the motor busses might be operated, which were not mentioned in the notice for the public hearing. These, in our judgment, are questions which cannot be satisfactorily passed upon by this Commission upon an application for a certificate of convenience and necessity. It surely was not intended that the Public Service Commissions (which may, or may not, be composed in whole or in part of men who are lawyers) should suspend the consideration of the question whether a motor bus system such as the applicant proposes to inaugurate in New Rochelle will be a convenience and necessity to the people of New Rochelle, until it first deals, perhaps inexpertly, with such technical objections to the validity of the franchise as have here been raised. The applicant comes before us with what seems to be an adequate "consent of the local authorities of the city." This was granted by the municipal authorities, in a formal manner, after public hearing, and after extensive negotiations between the appli-

cant and these authorities—all conducted in the open. The purpose of these negotiations, as stated to us, was to bring about such modifications in the original routes asked for as would better serve the interests and convenience of the people of the community, and at the same time conflict as little as possible with the existing trolley service. As a matter of fact the changes made in the routes first proposed were not many. Now whether this fact—that the routes finally approved by the municipal authorities vary slightly from those which were asked for in the first instance—vitiates the franchise, or whether as a matter of fact there were irregularities in the advertisement of the public hearings before the New Rochelle common council, and if so what effect such irregularity has upon the validity of the franchise, are questions into which we really do not think that we are called upon to enter at this time. They are exceedingly technical questions, both of law and of fact, and similar points might conceivably be raised by some interested party in almost every application for a certificate of convenience and necessity for the operation of motor bus systems which may hereafter be made to this Commission. If we had to determine questions of this kind first, before going into the merits at all, it is conceivable that this Commission, though charged primarily with the duty of determining the particular question of convenience and necessity, might be indefinitely delayed in passing upon that question in the majority of cases before it. True, it is also conceivable that applicants will occasionally come before us with franchises so obviously and glaringly worthless as to warrant our rejecting their application upon that ground alone. We do not consider that this is such a case. Therefore we shall leave such questions as have been raised affecting the validity of the franchise which was granted by the New Rochelle authorities, to be subsequently determined by a proper tribunal, and shall proceed to discuss the pending application upon what we conceive to be its merits.

[2, 3] New Rochelle now has a population of some 32,000 people, and the business of carrying passengers within the city limits for 15 cents, or less, is exclusively in the hands of the Westchester Electric Railroad Company, whose system extends, also, to other communities in Westchester county. This com-

pany's New Rochelle extensions have been so laid out as to provide at least partial transportation facilities for practically every section of the city. It goes without saying, of course, that people who do not live directly along the line of the trolley, and who have to walk for varying distances in order to make any use of it, find the present service incomplete and unsatisfactory. The situation in this respect does not differ much in New Rochelle from that which may be found in most other cities. It is an inevitable condition of trolley operation everywhere. Nor is there any more likelihood in New Rochelle than in other communities of its size and character that from now on trolley lines will be laid upon a good many of the public highways that have already escaped this kind of occupancy. Owing to improvements which have recently occurred in the field of automobile construction and in the way our public highways are being maintained, there appears to be less likelihood to-day than there has ever been since trolleys were first introduced, of extensive new trolley construction in cities like New Rochelle. So that, broadly speaking, it may be said—and this applies to practically every city in the state—that the only relief in sight for those who do not live along existing trolley routes lies in the possibility of efficient motor vehicle service being introduced.

Otherwise the people of New Rochelle may be said to receive fairly satisfactory service from the Westchester Electric Railroad Company. The several branches of the trolley road, tapping the various sections of the town, converge near the New Rochelle station of the New York, New Haven, & Hartford Railroad. Transfers are given at this point. In the immediate neighborhood of the station, practically every street and highway is traversed, for a certain distance, by one or another of the branches of the present trolley system.

The present applicant has not unnaturally taken the immediate neighborhood of the New York, New Haven, & Hartford Railroad station as the central point of his proposed system, also. He could not very well do otherwise, and give any proper service to the people of New Rochelle. In a city like New Rochelle, which is a sleeping place for thousands of New York business men, a much larger proportion of these people make daily use of the railroad than is true in the case of most other cities. Rec-

ognizing that fact, just as the trolley company recognized it long ago, the present applicant has planned to make the railroad station the virtual starting point for each of his six proposed routes within the city. Inevitably, of course, each of these six routes contemplates the use of a street already occupied by the trolley for a certain distance in the neighborhood of the station. There is no street in that neighborhood that is not so occupied. In other respects, however, four out of the six proposed new routes have been laid out so as not to come into any actual conflict at all with the present trolley routes. They leave the trolley tracks at the nearest free street, or substantially so, and thereafter traverse highways which have no trolley service, and often at points so far removed from the present trolley lines as to make the idea of competition between the old and the proposed new system a very far fetched one indeed. Still, even in these cases, it is no doubt true that a great many people who will use the new lines if they are established now avail themselves more or less unsatisfactorily of the existing trolley service—so that in that sense, Mr. Gray's entire proposed system will be in competition with the present one. In the case of routes Nos. 3 and 5 described in Mr. Gray's franchise, the competition will be actual and direct. These routes make practically exclusive use of streets upon which the trolley now runs.

In passing upon Mr. Gray's application for a franchise, the mayor and common council of the city of New Rochelle seem to have taken every proper precaution against casual or fly-by-night methods creeping into the operation of the new system. They have included in the franchise many conditions designed to be of benefit to the local traveling public. The franchise which Mr. Gray finally got from the New Rochelle authorities provides, among other things, that the busses shall seat from ten to seventeen people, that they shall be of the "Pay-As-You-Enter" type, that they shall have pneumatic tires, that they shall be kept in good condition, and that all passengers shall have seats, that the fare for any continuous ride on any route shall be 5 cents, that children under five and policemen and firemen on duty shall be carried free, that they shall be run on a twenty minute schedule from 6:30 A. M. to 1:30 A. M., that the franchise shall expire in ten years, that 3 per cent of the gross earn-

ings shall be paid quarterly to the city, that a bond shall be given to insure prompt payment of this and other obligations, that the busses shall stop upon signal at the near side of street crossings, and shall be subject to the present and future traffic regulations of the city, that the franchise shall be forfeited in the event of the insolvency of the holder or of a failure to operate the new system in accordance with the terms of the franchise. The inclusion of these and other precautionary requirements in the franchise granted by the city of New Rochelle shows that, from the standpoint of the traveling public at least, the municipal authorities have dealt with this matter in no careless or haphazard fashion, but that on the contrary every effort, consistent with giving the new company a chance for its life, has been made to insure good service to the people of New Rochelle. Therein this case differs widely from some other applications which have been, and doubtless from many which will be, made to this Commission under the new law.

At the recent hearing before this Commission the mayor of New Rochelle and other prominent citizens appeared and urged that a certificate of convenience and necessity be issued to the applicant with the least possible delay. Testimony showing the great convenience it would be to every part of the city if these new transit facilities were established, was offered. Mr. Gray, the applicant, disclaimed any idea of direct competition with the existing trolley system—although reserving to himself, of course, the right to pick up fares along such portions of his several routes as might coincide with the present trolley routes. His real purpose, he said, was to furnish for the first time, transportation facilities to growing sections of the city which are so far distant from the lines of the present system as practically to derive no benefit whatever from its existence. In justification of the virtual paralleling of the existing street railroad by his proposed routes Nos. 3 and 5, he pointed to the rapid growth of these sections and to the advantage it would be to the people there to enjoy even more ways of getting to and from the station than they now possess. No serious attack was made by the applicant, or by anyone else, upon the manner in which the trolley lines are now being operated. A certain amount of stress, it is true, was laid upon the fact that the trolley company's system

of transfers brings such large numbers of out-of-town people into New Rochelle that the company's purely local business can no longer be satisfactorily taken care of. On the whole, however, the trolley company was given full credit for doing the best it could under existing conditions. But every witness insisted that the projected motor line, if established, would add greatly to the convenience of thousands of residents of New Rochelle, in the case of many of whom the establishment of such a line was an absolute necessity if they were ever to enjoy any real transportation facilities at all. Without regard to the effect it might have upon the business of the trolley company, representative citizens from all parts of New Rochelle expressed themselves as unqualifiedly in favor of the establishment of this new motor bus service.

From all of which it will be seen that in this New Rochelle case we have a very typical situation indeed to deal with. Many applications involving in the main similar states of fact are bound to be made to us in the near future, under chapter 667 of the Laws of 1915. Many such are, in fact, already pending. Each of these cases will have to be determined, of course, in the light of its own surrounding circumstances, and upon its own merits. At the same time, it may be desirable that the Commission should briefly state its reasons for arriving at the decision it has come to in this particular case—thus perhaps assisting those interested in subsequent applications by affording them prompt indication of the general view which the Commission takes upon some of the points which, in one way or another, will probably come up in connection with nearly every other application of this kind.

We have reached the conclusion, in the present case, that Mr. Gray's application should be granted in so far as it concerns his proposed routes Nos. 1, 2, 4, and 6, and that it should be denied in so far as it concerns his proposed routes Nos. 3 and 5. As already mentioned, the first four routes have been laid out with the intention of avoiding direct competition with the existing trolley as much as possible. Their incidental paralleling of the trolley tracks for short distances near the New Rochelle station is, under the circumstances, unavoidable, and does not of itself seem to warrant a rejection of the routes. In other re-

spects we do not consider that these routes really compete with the existing trolley routes at all—at least not to the extent of violating any right which the railroad company has to protection at the hands of this Commission against unnecessary and wasteful competition. That it, and all companies similarly situated, are entitled to such protection up to a certain point, is a fact beyond any possible question. It was one of the wise and just provisions of the Public Service Commissions law to vest in the Commissions requisite authority to prevent wasteful and unprofitable competition between privately owned enterprises engaged in any public utility field. The reasons for doing this were obvious. The people of New York state in their collective capacity have not as yet seen fit to engage largely in any form of government-operated utility enterprise. Individual courage, energy, foresight, and a willingness on the part of private investors to risk large sums in bringing modern conveniences within the reach of all men,—these have been the only agencies through which, speaking generally, it has hitherto been possible for the people of the state of New York to enjoy the benefits attaching to such necessaries of modern life as improved transit, lighting, telephonic, and telegraphic facilities. Great financial hazard to the promoters of privately owned public utilities mark the pioneer period of nearly all these enterprises. Any popular idea there may be to the effect that those who were first in these fields invariably reaped large returns is a mistaken one. The history of railway receiverships, and indeed of those dark days in the lives of all public utilities when the public was slowly waking up to the realization that it would be worth its while to avail itself of the new facilities, will amply refute any such idea. Doubtless, therefore, when it passed the Public Service Commissions law, the legislature included among its provisions the one we are here discussing very largely from a sense of fairness to the private interests already engaged in these fields of work. But the chief consideration must have been a realization that, without some such protective provision in the law, the public itself would be the ultimate sufferers from ill-regulated and wanton competitive conditions. It was plain that under such conditions none of the competitors in any given field could hope to enjoy the degree of financial ease and prosperity

which in the long run is absolutely essential if good service is to be given. After the money first invested in launching a public service enterprise has gone, the only condition upon which more money can be obtained is that the enterprise shall be a financial success. More money, and still more money, is a constant need in connection with all public utility establishments, if they are to keep abreast of modern scientific progress, and if the scope of the original enterprise is to be extended so that multitudes of people may in the end share its advantages. The check upon unwise competition which the Public Service Commissions law enables the Commission to exercise is, therefore, abundantly justified, we think, from the point of view of public advantage alone. The power has been made use of more than once in what seems to have been the best interest of the people of the state.

Now the railroad company contends, with undoubted sincerity, that both itself and the public will suffer seriously from the threatened competition of Mr. Gray's proposed motor bus lines. The Commission has listened to that argument with all the sympathy which naturally attaches to the belief we entertain that the legislature acted wisely in including in the Public Service Commissions law the provision upon which the railroad company here relies. We are unable, however, to agree with the railroad company as to what our duty is, in this particular case. So far as routes Nos. 1, 2, 4, and 6 on Mr. Gray's plan are concerned, it appears perfectly plain to us that it would be a gross abuse of power for us to forbid the establishment of these routes. It was not the intention of the legislature to forbid all competition between utility companies. That is made perfectly clear by the wording of the law. And certainly it was not intended, either, to place the Public Service Commissions in the position of apparently preventing the people of any locality from enjoying, to the fullest extent consistent with the general good, all new improvements and conveniences as fast as these might appear. We should have to hold, in effect, that the legislature intended these Commissions to fill some such invidious and ungrateful rôle as this—that we were expected to be mere impeders of modern progress in the public utility field—before we could accept the reasoning of the Westchester Electric Railroad Company as to what our duty is in reference to granting or withholding approval

of the proposed routes Nos. 1, 2, 4, and 6. The "competition," in the case of these routes, is of a vastly different kind from that straight-out competition between two services substantially similar in kind and value, which we think the legislature had in mind when it directed us under certain conditions to apply the brakes to such competition in the same territory. In the case of Mr. Gray's four first-mentioned routes, his new motor busses will, as we have pointed out, run on entirely different streets from those occupied by the trolleys—some of them parallel it is true, but these distant one from another, and for the most part not on parallel streets at all. Thus direct transportation facilities will be given to large numbers of people who now have no direct facilities. We are unable to accept the view that, merely because it is now possible for these people by walking a certain distance to use the trolley, they should forever be debarred from the benefits of more immediate and convenient transportation.

[4] We have a feeling, too, that the widely differing points of view which people have upon the question whether traveling in a motor bus is as pleasant as traveling in a trolley, or *vice versa,* is a relevant consideration for us to give at least a little weight to in determining a matter of this kind. The two methods of transportation seem to appeal, loosely, to different publics. People "react" from them, as the saying is, differently. One commuter, to whom riding in a trolley is mere pain and penance, may feel an anticipatory glow at the thought of making the last stage of his homeward journey in one of Mr. Gray's motor busses. The sentiments of his neighbor, confronted by such a prospect, may be diametrically the opposite of these. He may prefer the trolley. From a utilitarian standpoint the two kinds of travel have precisely the same purpose, but ought not people be allowed a little latitude in using the kind of transportation facility they like best, when business men stand ready to furnish either kind? Is it the policy of our government to so far interfere with individual liberty as to say that even this small measure of it is dangerous, and that the state should step in and stop it? That is very much the way this problem strikes large numbers of intelligent and public-spirited people, at first blush. They cannot for the life of them see upon what legitimate ground a public

body of this kind can interfere with as many bona fide proposals like Mr. Gray's as there are people ready to make them, and to back them financially. And this is a point of view which cannot be entirely ignored.

[5] Still, in the case of routes Nos. 3 and 5, we have somewhat reluctantly reached the conclusion that we should be violating the spirit and intent of the Public Service Commissions law if we issued the certificate of convenience and necessity that is asked for. These routes parallel the trolley, upon the same streets, practically through their entire length. The population in the portions of the city which they penetrate is not particularly dense. Both the Winyah and North avenue sections are inhabited largely by well-to-do people, many of whom keep motor cars of their own. In the sense that it would allow people an even larger choice than they now have of ways to get to and from the station, it would undoubtedly be a convenience if Mr. Gray's proposed routes Nos. 3 and 5 were established. But by no stretch of the imagination can it be conceived of as a necessity. And to permit it would be to compel the existing street railroad company to meet competition of a kind which would pretty certainly cripple it, and which might (other factors contributing) inflict irreparable injury upon it. Therefore, despite the doubts heretofore expressed as to where our duty really lies in cases like this, we have concluded that the issuance of such a certificate as is here asked for in the case of routes Nos. 3 and 5 would be an improper exercise of power on the part of the Commission. No real case upon the score of necessity has been presented to us at all.

[6] We have discussed this matter at some length, partly because it is the first case to come up for decision under the new law, and partly because it seems to raise in a very clear-cut and discussable form nearly all the serious considerations of public policy which will have to be borne in mind by the Commission in disposing of future applications for certificates of convenience and necessity to motor bus projects of the better sort. The same considerations ought, we think, be thoughtfully taken into account by those who may have it in mind to petition this Commission for such certificates in the future, before they make their applications. Broadly speaking, what must guide the Commis-

sion in all such cases is an enlightened view of what will best, in the long run, serve the public at large. Such other duties as we may have in this connection—such a duty, for instance, as that of protecting existing investments, under certain circumstances, against competition—must be regarded as subordinate to our primary duty to the public, if (as may sometimes happen) these duties should appear to clash. But we are inclined to think that real conflict between these two apparently divergent responsibilities will occur very much less frequently than it might at first blush be expected to. In the last analysis, the protection of investments which have already been made in public utility enterprises in good faith will be seen to harmonize pretty well with the idea that the public ought always get the benefit of the very best there is in the way of transportation and other similar facilities. The best there is, in most cases, can probably be most certainly achieved through the policy of protecting our well-managed public service corporations from the sort of competition that in the end leads to the bankruptcy of both competitors, to the ultimate injury of the public itself. In the case of Mr. Gray's motor busses on Winyah and North avenues, we think that their establishment upon routes already so well served by the trolley as these two routes are, would not be justified by any real public need for the additional facilities, while their effect upon the trolley company's financial ability to give people living on North and Winyah avenues as good transportation service in the future as it has given them in the past might be very injurious indeed. In withholding approval from that portion of Mr. Gray's plan, we think we are protecting the public in just the way that Public Service Commissions, under such circumstances, are expected to protect the public. We approve of routes Nos. 1, 2, 4, and 6, because we believe that, if these are established, they will satisfy a legitimate demand for better transit facilities, without any material resulting loss (and perhaps even with some eventual profit) to the Westchester Electric Railroad Company. It is by no means inconceivable that the increase in the population of New Rochelle which may be anticipated if the benefits of cheap local transportation are extended through all parts of the city, will in the end be accompanied by an increase in the prosperity of every well-managed local

enterprise in the neighborhood. The history of the business of urban transportation justifies the hope that such benefits will in the end extend even to the older transportation companies, who now look upon new comers in the field as dangerous rivals, but who may nevertheless be eventual gainers from the local growth which these new comers help to promote.

In reaching the foregoing conclusions the Commission desires it to be distinctly understood that it is not at this time determining what the legal effect will be upon the applicant's franchise, if otherwise valid, of the Commission's decision that a certificate of convenience and necessity shall issue only as to some of the routes specified in the franchise, and not as to all. We believe that the duty which the legislature has imposed upon us in connection with cases of this kind will best be performed if we simply decide, strictly upon its merits, the question of public convenience and necessity as to those routes separately—leaving it to other tribunals, upon the proper motion of interested parties, to determine what the legal consequences of our decision are, and what further steps (if any) need be taken in the light of that decision to protect the rights of any of these parties.

Note.—In Re Westmoreland, P.U.R.1918C, 318, the California Commission held that the right to operate an automobile transportation line without securing local permits or a certificate from the Commission allowed under chapter 213 of the Laws of 1917 in the case of owners operating in good faith prior to May 1, 1917, was nontransferable.

In Re Pickwick Stages, Northern Div. (Cal.) Decision No. 5070, Application No. 3436, Jan. 25, 1918, it was held that if a corporation takes over and operates an automobile stage line owned by a company not operating under local permits as provided by chapter 213, Laws of 1917, it must obtain permits from the local authorities, and an order from the Railroad Commission declaring that public convenience and necessity require it to conduct such stage-line business. (P.U.R.1918C, 319.)

In Re Swett, Decision No. 8588, Application Nos. 4968, 6293, Jan. 26, 1921, the California Commission held that a delay of approximately one year in commencing operation of an automobile truck line after the certificate had been granted, would not work to the annulment of the permit when the delay was due to reasons beyond the control of the operator. (P.U.R.1921C, 637.)

Note.—Violation of Terms of Permit.

A clause in a certificate of convenience and necessity for the operation of an auto stage, forbidding the transfer or assignment of the certificate without the written consent of the Railroad Commission, is violated by the transfer by one copartner of his partnership interest in the operative route to another partner. Re Boyle (Cal.) P.U.R.1922A, 859.

A clause in a certificate of convenience and necessity for the operation of an auto stage, providing that no vehicles should be operated unless owned by the grantee, a copartnership, or leased by such grantee on a basis satisfactory to the Commission, is violated by the operation of equipment owned by the family of one of the copartners. Ibid.

NEW YORK SUPREME COURT, SPECIAL TERM, NIAGARA COUNTY.

PUBLIC SERVICE COMMISSION, SECOND DISTRICT

v.

HURTGAN.

[91 Misc. 432, 154 N. Y. Supp. 897.]

Automobiles — Statutory construction — Certificate of convenience and necessity — License.

A motor bus line carrying passengers and freight from points within a city to a village must obtain the consent of the city authorities and a certificate from the Public Service Commission, as provided by §§ 26 and 27, chapter 667 of the New York Laws of 1915, although no separate fare is charged within the city and the rate of fare is over 15 cents.

[August, 1915.]

APPLICATION by the Public Service Commission, Second District, for an injunction restraining Burt G. Hurtgan from operating an interurban line of motor vehicles without the consent of the local authorities of the city from which he operates, and without obtaining a certificate of convenience and necessity from the Public Service Commission; granted.

Appearances: Frank H. Mott for plaintiff; Morris Cohn, Jr., for International Railway Company; Earl & Earl and S. W. Dempsey for defendant.

Brown, J., delivered the opinion of the court:

The defendant operates a bus line of motor vehicles for the transportation of passengers and freight from the station of the International Railway in the city of Lockport, easterly along Main street to East avenue; thence easterly along East avenue to Vine street; thence northerly along Vine street to Market street; thence along Market street to Lake avenue; thence along Lake avenue to the northerly line of the city of Lockport (all of which route is within the city of Lockport), and from the city line along the creek road to Olcott, a small village upwards of 10 miles north of Lockport, on Lake Ontario. The return trip covers the same route to the International Railroad station in the city of Lockport. The defendant uses in such business two or more motor vehicles, one carrying twelve passengers and one carrying twenty-two passengers, making nine round trips a day. In such operations he receives passengers within the city of Lockport only for transportation to points outside the city, and discharges within the city of Lockport only passengers that have been transported from Olcott and points beyond the city limits. Within the city of Lockport he maintains or advertises bus line stations at Kenmore Hotel, at Opera House Corner, and at Vine and East avenue. For such service the defendant charges the following fares: Round trip, Lockport-Olcott, 50 cents; round trip, Lockport-Burt, 40 cents; round trip, Lockport-Newfane, 35 cents; round trip, Lockport-Corwin, 30 cents; round trip, Lockport-Wrights, 25 cents. No separate charge is made for transporting passengers within the city of Lockport, the fare charged being to destination, irrespective of the point in the city of Lockport where the passenger is received. For the privilege of so operating his bus line or motor vehicle route the defendant has not applied for or received the consent of the authorities of the city of Lockport. The International Railway Company operates a street railway from its station on Main street, in the city of Lockport, through Main street and East avenue to the village of Olcott, for which privilege it has received the consent of the authorities of the city of Lockport; and the operation of the motor vehicles of the defendant being in claimed competition with the business of the International Rail-

way Company, that company voluntarily appeared and was made a party to these proceedings.

The Public Service Commission and the International Railway Company assert that the defendant is carrying on his business of a common carrier within the city of Lockport in violation of chapter 667 of the Laws of 1915, in that he has failed to procure the consent of the local authorities of the city therefor, and has failed to procure a certificate from the Public Service Commission certifying to the necessity and public convenience of such business, as required by law. The defendant asserts that he is not a common carrier for hire within the city of Lockport, and is not amenable to the requirements of chapter 667 of the Laws of 1915. Chapter 667 of the Laws of 1915 is entitled: "An Act to Amend the Transportation Corporations Law, in Respect to Stage Routes, Bus Lines and Motor Vehicle Lines Carrying Passengers for Hire in Cities." [Laws 1915, p. 2247.]

Section 25 of the Transportation Corporations Law, as amended, reads: "Additional Persons and Corporations Subject to the Public Service Commissions Law.—Any person or any corporation who or which owns or operates a stage route, bus line or motor vehicle line or route or vehicles described in the next succeeding section of this act wholly or partly upon and along any street, avenue or public place in any city shall be deemed to be included within the meaning of the term 'common carrier' as used in the Public Service Commissions Law, and shall be required to obtain a certificate of convenience and necessity for the operation of the route or vehicles proposed to be operated, and shall be subject to all the provisions of the said law applicable to common carriers."

Section 26, as amended, reads: "Consent Required.—No bus line, stage route nor motor vehicle line or route, nor any vehicle in connection therewith, nor any vehicles carrying passengers at a rate of fare of fifteen cents or less for each passenger within the limits of a city or in competition with another common carrier which is required by law to obtain the consent of the local authorities of said city to operate over the streets thereof shall be operated wholly or partly upon or along any street, avenue

or public place in any city, nor receive a certificate of public convenience and necessity until the owner or owners thereof shall have procured, after public notice and a hearing, the consent of the local authorities of said city, as defined by the railroad law, to such operation, upon such terms and conditions as said local authorities may prescribe," etc.

It is plain that certain motor vehicles cannot be lawfully operated in a city without obtaining the consent of the local authorities and a certificate from the Public Service Commission certifying to the public convenience and necessity thereof. It is believed that the statute requires such consent for the operation in a city of either: (a) A bus line; (b) a stage route; (c) a motor vehicle line or route; (d) a vehicle in connection with a bus line, a stage route, a motor vehicle line or route; (e) a vehicle carrying passengers at a rate of fare of 15 cents or less for each passenger within the limits of a city; (f) a vehicle carrying passengers in competition with another common carrier which is required by law to obtain the consent of the local authorities of said city to operate over the streets thereof. The statute is that to lawfully operate any one of the above six specified lines, routes, or vehicles in a city the consent of the local authorities and the certificate of the Public Service Commission must be first obtained, provided such line, route, or vehicles are engaged in the business of carrying passengers for hire in the city.

While it is true that the defendant does not exact a separate fare for any part of the transportation that is within the city of Lockport, yet it is true that for transporting a passenger from any of three advertised stations within the city to the village of Olcott and return the defendant exacts a fare of 50 cents. The service rendered is partly performed in the city. The fare exacted is from or to any point in the city on the route covered to or from the outside point, as the case may be. The advertised rate of fare—"Round-trip Lockport-Olcott 50c. . . . Tickets for sale at Kenmore Hotel . . . in Lockport, J. C. Ulrich at Olcott. . . . Bus Line Station Lockport—Kenmore Hotel, Opera House Corner, Vine and East Avenue, Olcott J. C. Ul-

rich's Restaurant"—means that the defendant will transport a passenger from the Kenmore Hotel, Opera House Corner, or Vine and East avenue, in the city of Lockport, to J. C. Ulrich's restaurant in Olcott, and return the passenger to the Kenmore Hotel, Opera House Corner, or Vine and East avenue, as the passenger may desire, for 50 cents. That certainly is the carrying of a passenger for hire, and it is beyond dispute that to so carry a passenger by means of a motor vehicle is the operation thereof, wholly or partly, upon or along a street in the city of Lockport. How long would it take a jury to find as a fact upon the evidence that the defendant was carrying a passenger for hire who boarded his motor vehicle at the Kenmore Hotel, and was injured through slight negligence of the defendant at the Opera House Corner, all in the city of Lockport?

The defendant's contention that because he does not carry passengers at a rate of fare of 15 cents or less for each passenger within the limits of a city he is not amenable to the other provisions of the statute cannot be sustained.

A finding cannot be made that the defendant operates a vehicle carrying passengers in competition with the International Railway Company within the city. Whatever competition there may be is relative solely to traffic between the city and points outside.

The defendant does operate for hire in the city of Lockport a bus line; he operates in the city a stage route; he operates in the city a motor vehicle line or route; he operates in the city a motor vehicle connected with a bus line, a stage route, and a motor vehicle line or route,—all of which are feeders, connections, inducements, advertisers, solicitors, aids to, and a part, of his system of carrying passengers for hire from Lockport to Olcott. He is a common carrier of passengers for hire in a city, and is required to obtain the consent and certificate essential to the lawful carrying on of his business.

Injunction awarded the plaintiff, restraining the defendant from operating his motor vehicles and carrying passengers for hire within the city of Lockport.

NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT.

PUBLIC SERVICE COMMISSION, SECOND DISTRICT,

v.

ELMER G. BOOTH.

(— App. Div. —, 156 N. Y. Supp. 140.)

Property — Municipal license to operate public vehicle.

1. A municipal license to operate a public vehicle is not property in a legal or constitutional sense.

Constitutional law — Police power — Power of state to declare jitney busses common carriers.

2. The state may declare jitney busses operating in cities common carriers, and require operators to secure a certificate of convenience and necessity from the Commission.

Automobiles — Statutes — Construction — Effect of prior city license to suspend statute requiring certificate of convenience to operate jitney bus.

3. A statute requiring persons operating motor vehicles in competition with another common carrier to obtain a certificate of convenience and necessity from the Commission applies to persons operating under a prior city license.

Discrimination — Statute requiring certificate of convenience to operate motor vehicle charging 15 cents or less.

4. No illegal discrimination is made against persons operating motor vehicles for the transportation of persons for 15 cents or less, and in favor of persons charging a higher rate, by a statute requiring operators to secure a certificate of convenience and necessity from the Commission.

Discrimination — Statute requiring operators of motor vehicles charging 15 cents or less to furnish bond and pay tax.

5. No illegal discrimination is made against persons operating motor vehicles for transportation of persons for 15 cents or less by a statute requiring operators to furnish a bond to secure safety of passengers and the public, and imposing a tax upon such vehicles, when like provisions are not made with reference to other vehicles carrying passengers for hire.

[December 3, 1915.]

APPEAL by the defendant from an order made at the Ulster county special term and entered in the office of the clerk of Albany county on the 28th day of September, 1915, enjoining the defendant from operating a motor jitney bus carrying passengers for hire in the city of Rochester unless and until he shall pro-

cure the assent of the local authorities of said city and the certificate of public necessity and convenience from the Public Service Commission, Second District, as required by §§ 25 and 26 of the transportation corporations law, as amended May 22d by chapter 667 of the Laws of 1915; affirmed.

See same case below, 155 N. Y. Supp. 568.

Appearances: Richard R. B. Powell, of Rochester, for appellant; Ledyard P. Hale for the Commission, respondent.

Kellogg, P. J., delivered the opinion of the court:

[1] In consideration of $1 the city of Rochester on the 3d day of March, 1915, granted to the defendant a license permitting him "to carry on the business of public vehicle" within the city until December 31, 1915. While he was operating his motor jitney bus under that license, chapter 667 of the Laws of 1915 became effective May 22d. He continued to operate his bus, claiming that the statute did not apply to him, as he had license from the city, and this action results.

Licenses from the state or a municipality are ordinarily to be considered not as contracts, but as temporary permits to do what otherwise would be unlawful, and are not property in any legal or constitutional sense. Metropolitan Bd. of Excise v. Barrie, 34 N. Y. 657; People ex rel. Lodes v. Health Dept. 189 N. Y. 187, 13 L.R.A.(N.S.) 894, 82 N. E. 187.

By the charter and ordinances of the city of Rochester a hackman or vehicle for transporting people from place to place for hire cannot operate in the city without a license, and the common council had power to grant such a license by § 86 of the charter of said city, chapter 765, Laws of 1907. The only effect of the license was to make legal that which without it would be illegal.

[2] The legislature of the state, therefore, under the police power, in providing for the safety and welfare of the public, may make laws defining what vehicles may be operated in the cities as public conveyances, and the terms of operation. The legislature cannot bargain away the police power of the state.

We do not understand that the power of the legislature to declare all jitney busses common carriers, and to require that they shall not operate without the certificate of the Public Service

Commission as to convenience and necessity, is seriously questioned in this case.

[3] The contention is that the terms of the act indicate that it has no application to busses already operating under city license, and that it does not interfere with the existing contracts or vested rights. But we have seen that there are no existing contracts or vested rights under such a license, and that its effect is merely to permit the business to be carried on. From the fact that between January 1 and May 22, 1915, 737 licenses for jitneys or similar busses were granted in the city of Rochester, we may infer that it is a traffic of sudden and rapid growth, and that somewhat similar conditions exist throughout the state. These jitneys operate upon any part of the street, and are not confined to a fixed track; and it is evident that when they are seeking fares in competition with the street cars and other busses some regulation is necessary to protect the passengers and the public from careless driving and improper operation. It is evident that the legislature in passing the statute in question had in view the protection of the public from the dangers incident to the traffic, and also the fact that these busses carrying passengers for a small fare come directly in competition with the street cars, which can only be operated under a certificate of convenience and necessity and the reasonable regulations of the Public Service Commission. There is no difficulty in determining that the legislature, within the police power, had the right to make this law. If the enactment of the statute was necessary it was also necessary that it should have force at once and as to all busses of this class. The mere fact that a bus had received a license from the city before the enactment of the statute made it no less dangerous to the public than one which had no such license. There is no good reason why the statute should apply to the unlicensed bus any more than to one having a license.

A law enacted for the safety and protection of the public should be so construed that the public may have the benefit of its full enforcement wherever its interests are threatened. The language of the statute seems to leave no doubt that it applies to all busses of the kind, no matter whether they were under a previous license or not. The expression in the 25th section of the transportation corporations law, "any person or any corporation who or which

owns or operates a stage route, bus line, or motor vehicle line or route . . . shall be deemed to be included within the meaning of the term 'common carrier,'" [as amended Laws 1915, chap. 667] etc., evidently refers to every stage route or line, and the expression in the 26th section that no bus line shall operate except upon the conditions mentioned therein clearly applies to every bus. We see that not only the language of the law, but the very purpose for which it was enacted, compels the construction that it is intended to apply to all such busses operated in cities without regard to whether they had or had not received a prior city license.

[4, 5] It is further urged that this statute relating only to busses which charge 15 cents or less discriminates between them and busses charging a higher rate, and that there is no reasonable ground for the statutory discrimination; that the statute permits a bond to be required for the safety not only of the passengers, but the public, when like provisions are not made with reference to other vehicles operated for hire; and that the statute imposes a tax upon the jitney which is not imposed upon other vehicles carrying passengers for hire, and that these discriminations are illegal and in violation of the defendant's constitutional rights.

Many circumstances exist which place the jitney in a different class from the motor vehicle which carries passengers by the hour, or from one fixed place to another. The jitney by reason of its low fare and the manner of its operation comes in direct competition with the street cars, which are common carriers and require a certificate of convenience and necessity. The jitney, by moving rapidly from place to place upon either side of the street in picking up passengers in competition with the street cars or other jitneys, presents a menace to its passengers and the people upon the street which is greater than that from the ordinary cab or vehicle; and other reasons may have seemed to the legislature to require that these busses be put in a class by themselves. We cannot say that the classification is unreasonable; upon the contrary it seems reasonable.

We conclude, therefore, that the statute in question is valid and prevents the operation of the appellant's bus until he complies with its terms. The injunction was therefore properly granted, and the order is affirmed, with costs.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

IN RE LE ROY D. BECRAFT.

[Case No. 5263.]

IN RE JAMES E. ADAMS.

[Case No. 5282.]

[No. 244.]

Certificates of convenience — Auto-bus line — Effect of financial loss to railway company.

1. The fact that a street railway company will suffer financial loss from the parallel operation of an auto-bus line does not justify the refusal by the Commission, in the exercise of its discretion of a certificate of convenience, where the people and the officers of a city have declared in favor of it.

Certificate of convenience — Automobiles — Jurisdiction of Commission — Route partly within and partly outside city.

2. The fact that a statute limits jurisdiction of the Commission in the matter of granting certificates of convenience to auto-bus lines to the streets, avenues, and public places in any city, does not preclude the consideration of proposed routes, partly within a city and partly outside, in their entirety, where it is made to appear that suburban travel over a part of the line is not properly accommodated unless the same may be continued over the city streets.

Certificates of convenience and necessity — Auto-bus lines — City permit as condition precedent.

3. That permits granted by a city council to auto-bus lines may be irregular and void will not prevent the Commission from granting certificates of convenience and necessity, since the two proceedings are independent, and the question of the legality of the city permits is one for the courts.

Certificates of convenience and necessity — Auto-bus lines — Routes apparently within and without city — Through passengers.

4. Certificates of convenience and necessity were granted for the

---

Note.—Local Consent Not Franchise.

In Re Woodlawn Improv. Asso. Transp. Corp. March 16, 1916, P.U.R.1916D, 1, the New York Commission held that a municipal consent to the operation of an auto bus line required by § 26 of the Transportation Corporations Law was not a franchise within the meaning of § 37 of the Second-class Cities Law, requiring franchises to be disposed of at public auction to the highest bidder.

operation of two auto-bus lines with routes partly within and partly outside of a city in which street railway cars were operated, the traffic to be limited, however, to through passengers.

[February 1, 1916.]

PETITIONS under chapter 667 of the Laws of 1915 for certificates of convenience and necessity for the operation of stage routes by auto buses in the city of Corning; granted as to through passengers.

Appearances: W. J. & G. W. Cheney (Guy W. Cheney, counsel) for petitioner Le Roy D. Becraft; Claude V. Stowell for petitioner James E. Adams; Stanchfield, Lovell, Falck, & Sayles (Ross Lovell, counsel) for the contestant, Corning & Painted Post Street Railway.

Hodson, Commissioner: The petitioners herein have asked the Commission for separate certificates of convenience and necessity for the operation of their respective auto-bus routes over certain streets in the city of Corning, and, in making decisions in these cases, they will be considered together because they were heard at the same time, the points raised by the contestant in each case are largely the same, and they both relate to auto-bus routes in the city of Corning, although such routes are partially different.

The proposed route contained in the Becraft petition runs "from the city line of Corning at Park avenue and Cohocton street in a northerly direction and Market street in a westerly direction to State street; thence northerly on State street and Bridge street, across the bridges over the New York Central Railroad tracks and yards, and the Chemung river, to Pulteney street, and thence westerly along Pulteney street to the westerly city line of Corning." The route set out in the Adams' petition is identical with the Becraft route between the city line and Park avenue and the corner of Bridge and Pulteney streets, but at that point the Adams' route continues in a northerly direction along Bridge street to Perry avenue, there turning on Perry avenue and running easterly to Baker street, and thence along Baker street to the northerly city line of Corning. The Becraft route continues from the westerly city line of Corning, along an improved state highway to the corner of Water and Hamilton streets

in the village of Painted Post, a distance of about 1 mile. Along this highway there are many residents, and about midway between the westerly city line of Corning and the terminus of such route in the village of Painted Post, there is located a large clubhouse which is maintained by the Ingersol-Rand Company for the benefit of the employees in its plant in Painted Post, where 775 men are employed, and about 50 of whom also live in the city of Corning, 2 or 3 miles from their place of employment. At the present time the only means of transportation to and from their work is the Corning & Painted Post Street Railway, with a round-trip service every 48 minutes between the corner of Pine and Market streets, Corning, and Painted Post, from 6:05 A. M. to 11:24 P. M., except that the run between Brown's crossing, the easterly terminus of the line to the Painted Post terminus, occupies 36 minutes, and the last car leaves Brown's crossing at 11:24 P. M., runs to the Delaware, Lackawanna, & Western Railway Company's station and back to the corner of Bridge and Pulteney streets, where it turns westerly and goes to Painted Post, leaving that place at 12:35 and running to the car barns of the railway company. Besides this service there is a limited passenger train service during the day and evening, between these municipalities, on both the Erie and the Lackawanna railroads, the station of the former being about a quarter of a mile from the center of the village of Painted Post and the latter about one half a mile away; while in Corning the Erie lands its passengers in the very center of the residential and business section, near the corner of Pine and Market streets, and the Lackawanna station is at least a mile from the point mentioned.

[1] The street railway company makes vigorous opposition in both these cases, and alleges that by reason of the fact that both proposed routes parallel its street car lines substantially all the way, the company would suffer financially in case the petitioners should receive certificates of convenience and necessity from the Commission.

Considerable proof was furnished by the contestant at the hearings, which informs the Commission as to the financial condition of the railroad company, together with the extent and character of its road and equipment, and its situation generally, as regards the municipalities which it traverses and serves.

It appears from such proof that the operating expenses of the company for the three years last past, were—

For the year ending June 30, 1913	$54,012.36
For the year ending June 30, 1914	44,671.17
For the year ending June 30, 1915	49,148.94

These figures exclude all payments made by the company for taxes, extensions, and betterments, which were considerable during these years, including special paving taxes and expenses for relaying of tracks. For the same periods, the gross income of the company was:

1913	$72,649.31
1914	64,157.25
1915	49,018.53

There were other facts produced which, in addition to the above showing, clearly demonstrate that the business of the railroad company is far from prosperous; and this is urged as a special reason why the Commission should refuse to approve of any plan which would materially reduce its income. On the other hand, it seems to have been determined by the local authorities of the city of Corning that the transportation offered by these two petitioners by means of auto buses is necessary to satisfy the requirements of the traveling public in and through the streets of the city.

This appears from the action of the common council in granting a permit for the operation of such auto buses in each case, after public bearings were held concerning the same. It is fair to assume that such action would not have been taken by the official representatives of the people of the city unless there was some real demand therefor. In addition to this, there was presented at the hearing a written request signed by many residents of Corning and vicinity, that the Becraft route from Brown's crossing to Painted Post be approved by the Commission, and stating that such bus line is required to give proper service to the people of the territory through which it passes, and that there was absolute satisfaction with the Becraft service over this route, before such service was discontinued at the direction of the Commission. The last state census shows that the city of Corning has a population of 13,459, and Painted Post has 1,319. The latter place, as well as its immediate surrounding territory, is

really a suburb of Corning, and the people of both places may be considered as intimately connected by social and business relations. A very striking illustration of this is found in the fact that many of the employees of the Ingersol-Rand Company live in Corning and work in Painted Post.

Under all these circumstances it would be a denial of justice to say to the people of this locality that, because the Commission is clothed with discretion in matters of this kind, we should withhold approval of a proper, lawful, and inexpensive means of public transportation into and through a city, after the officials and people of such city have declared in favor of the same, simply because another existing public utility might not reap the same rewards for its enterprise as it would if competition should be prevented.

True, it is the function of the Commission to prevent to the full extent of its power all unjust competition with and all unfair assaults upon, the business and invested capital of a public service corporation; but this rule cannot be so extensive in its application that all competition shall be considered unjust, or that for one to engage in a perfectly legitimate undertaking shall be considered an invasion of the vested rights of another.

The legislature has recognized that the automobile, in its various uses, has come to stay. This is shown in the enactment of the statute which makes this proceeding possible. It is also apparent in the expenditure of an enormous amount of money by the state to improve the highways; and in these very cases, the proof shows that there is a brick pavement over the highways and streets for almost the entire length of both routes. Confessedly, these pavements were laid for the convenience of the traveling public, and particularly for the use of automobiles; but it should not be contended that the traveling public, in making such use of the highways, should be restricted to the operation of their own automobiles, and not be permitted to be transported from place to place in the automobile of another by paying a reasonable charge therefor.

The company operates 5.254 miles of a single track street surface railroad from Brown's crossing in the town of Corning, to the Lackawanna station, and to the village of Painted Post in the town of Erwin. Of this line 3.434 miles are in the city of Corn-

ing, 1.21 in the town of Corning, .51 in the town of Erwin and village of Painted Post, and .10 on private right of way.

This private right of way traverses the territory in the towns of Corning and Erwin, where the car line leaves the state highway at or near the dividing line between such towns and runs northerly and then westerly until it reaches the streets in the village of Painted Post, and continues to the four corners in such village, which is also the terminus of the Becraft route.

The territory in this locality between the company's tracks and the state highway is from 548 to 805 feet wide, and about 5115 feet long. Running through the center of this strip are the main line tracks of the Erie Railroad, and in only one or two instances are there any cross streets over which the people living on the highway can reach the trolley cars, and these crossings are not much traveled; so that, as a matter of safety, such people desiring to take such car either way, are compelled to go either to Painted Post, or to the Corninng city line where such railroad leaves the state highway. There are many people living in this locality whose convenience is entitled to consideration, and they have with substantial unanimity asked the Commission to give them the opportunity to go back and forth in the Becraft bus, along the brick highway which the state has provided.

These are considerations applying particularly to the Becraft route; in many respects they are equally applicable in the case of the petitioner Adams, who asks for the approval of a route the same as the Becraft route, except that at the corner of Bridge and Pulteney streets the Adams' route continues along Bridge street in a northerly direction to Perry avenue, along Perry avenue to Baker street and via Baker street to the northerly city line of Corning; while the Becraft route turns at that corner and goes in a westerly direction to the westerly city line, and from that point continues along the state highway to its terminus in the village of Painted Post. The basis of the Adams' application is the necessity of the workmen at the New York Central shops to go to their work from their homes, and many of them live a mile away from such shops and across the Chemung river and the Central railroad tracks which divide the city of Corning about equal-

ly; and this distance is about doubled if such workmen follow the streets of the city of Corning to go to their work, for there is no direct and convenient passageway across such river and tracks which may be used by them; and even if they should all take the cars of the street railway company in going back and forth, they would still be required to walk a distance of 1 mile between Bridge street and the place of their employment. Upwards of 500 people are employed at these shops, many of whom live on the opposite side of the city, and the evidence shows that, while Adams was operating this route, he carried between 160 and 200 men in his buses every day. It will be observed, in this connection, that the street car schedule does not continue after about 12:30 at night, and from that time on through the early hours of the morning, many of such workmen are required to report for train duty at such shops, while others desire to return to their homes across the city; and the petitioner Adams intends to make round trips with his busses over his proposed route during every hour of the day and night, so that these workmen, requiring such transportation, may be accommodated; and the chief object of the petitioner Adams, in operating such proposed route, is to serve such workmen in carrying them between their homes and their work. The petitioner Becraft also disclaims any intention to carry passengers in his auto bus from one point to another in the city of Corning, but intends to carry only through passengers from any point in the city of Corning to any point outside of the city, as far as the terminus of his proposed route in the village of Painted Post.

For two years prior to the enactment of chapter 667 of the Laws of 1915, § 25 of the Transportation Corporations law vested in this Commission authority to grant certificates of convenience and necessity for the operation of auto busses over state highways; but the law of 1915 repealed that provision, so that, since May 22d of that year, any such auto-bus owners, previously requiring such certificates from this Commission, have been permitted to operate their auto busses over state highways without any let or hindrance from this Commission or any other body, and subject only to such regulations as may be prescribed by the state commission of highways, pursuant to the provisions of § 24 of the

Highway law of the state. It is obvious, therefore, that the petitioners herein may lawfully operate their busses along the streets and highways covered by their proposed routes which lie outside of the city; and if they should do so, and thus bring passengers to the city line, such passengers would then be subjected to the necessity of continuing to their point of destination in the city by some other means, while passengers within the city, desiring to go outside of the city or to the end of either of such routes, would, if these applications be denied, be compelled to reach the city line of Corning before they would have the right to employ the aid of these buses to carry them to the village of Painted Post, the New York Central shops, or any intervening points outside of the city. Such a practice would be intolerable, and could not be justified under the circumstances here presented; for it must be conceded that the streets of the city of Corning are maintained for the public generally, and are entitled to be lawfully used by those living outside as well as inside of the city; and the city authorities have determined in what manner these petitioners may lawfully use such streets.

[2] The convenience and necessity, which are sought to be satisfied herein, are not confined to the residents of Corning alone, but relate also to the public generally, in so far as the through routes of the petitioners are required for continuous transportation in and through the city. True, the law now limits jurisdiction of the Commission, in the matter of granting certificates, to the streets, avenues, and public places in any city; but that limitation does not preclude the consideration of proposed routes in their entirety, where it is made to appear, as in these cases, that suburban travel over a part of the line is not properly accommodated unless the same may be continued over the city streets. But in reaching this conclusion, we desire to emphasize the fact that the Commission cannot deal with any question touching the conduct of a stage route, bus line, or motor-vehicle line or route which is operated wholly without the limits of a city.

[3] In addition to the general opposition of the street railway company to these applications, a specific objection is made in both cases, that the permit granted by the city of Corning to each pe-

titioner is irregular and void, for the reason that the statute was not complied with by the common council, in the various steps taken by that body, and, particularly, that the notices of hearing upon the application for such permits were not published in the manner and for the time prescribed by law.

It will be noted that the permit required to be obtained from the common council in cases of this kind is not, in any sense, the basis of an application to the Commission for a certificate of convenience and necessity. They are separate and independent, although both must be obtained before an auto bus may be operated. And this Commission holds that the regularity of the proceedings in obtaining a permit, and the legality of the permit itself, should be left for the courts to determine, in case the same shall be assailed.

Re Gray, P.U.R. 1916A, 33. Opinion of Emmet, Commissioner.

At the same time these cases were heard by the Commission, evidence was also produced in a case against the Corning & Painted Post Street Railway on the complaint of residents of Corning and Painted Post, concerning poor equipment and inadequate service of the street railway; but in making this decision it is not deemed necessary to specifically refer to that case, or the proof relating thereto, because the decision of these two cases is made squarely upon their merits, irrespective of the kind of equipment possessed by said company or the character of the service it renders.

[4] The Commission should, therefore, grant a certificate of convenience and necessity to each of the petitioners in these cases, but, in the exercise of the rights so conferred, the same should be limited to through passengers only as hereinbefore indicated.

All concur.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

IN RE RYDER.

[Case No. 5219.]

Statutory construction — Automobiles — When subject to jitney law.

Chapter 667 of Laws of 1915 (New York), governing the operation of jitneys, is not applicable to automobiles standing at a hotel and railroad depot for hire to and from any point indicated by a customer, for a minimum fare of 25 cents, although the demand for service between the hotel and depot requires more or less regular trips along streets occupied by a street railway.

[January 20, 1916.]

COMPLAINT that Harry Ryder was operating automobile buses and vehicles in Olean contrary to the provisions of chapter 667 of the Laws of 1915; dismissed.

By the **Commission**: The Western New York & Pennsylvania Traction Company informed the Commission that the respondent was operating automobile buses and vehicles in the city of Olean contrary to the provisions of chapter 667 of the Laws of 1915. An order to show cause was made, to which an answer was filed and a hearing held in the city of Olean. On the hearing it appeared without contradiction that the respondent owns several automobiles which he operates for hire in and about the city of Olean. He has what is called a "stand" in front of a hotel, and he maintains at that point a telephone. He responds to calls by telephone and otherwise, and carries passengers from point to point within the city where and when they so desire. It is also his practice to have an automobile at the Erie Railroad station, something more than a mile from the center of the city, upon the arrival of the important trains. This car picks up passengers and carries them to any point to which they desire to proceed. His minimum fare is 25 cents. In other

Note.—Local Consents.

In Re General Motor Transp. Co. Decision No. 4637, Application No. 3089, Sept. 13, 1917, it was held that the California Commission would not authorize auto-transportation service between designated points, until it appeared that the applicant had secured necessary franchises or permits from the municipalities or counties through which it proposed to operate. (P.U.R.1918C, 320.)

words, he is performing a regular taxicab business with a minimum 25-cent charge. The only semblance of regular operation or regular route arises from the fact that many passengers desire to go between the Erie Railroad station and the hotel. This leads to a somewhat regular operation between these points and along a street occupied by the Western New York & Pennsylvania Traction Company. The act of 1915 is certainly broad in its provisions, but it does not cover this method of operation. The respondent is not operating a bus line, a stage route, a motor vehicle line or route, or any vehicle in connection therewith. He is not operating any vehicle carrying passengers at a rate of fare of 15 cents or less for each passenger. If, then, he is violating the law, it must be because he is operating vehicles carrying passengers in competition with another common carrier which is required by law to obtain the consent of the local authorities of the city. To construe this operation as falling within the last designation would bring within the operation of the law in every city in which street railways operate every liveryman, every operator of taxicabs, and even private vehicles, because under this construction the rate of fare or the existence of a fare would be unimportant, the only test being competition. The legislature could not have so intended. It is therefore

Ordered that the case be and the same hereby is dismissed.

Note.—A certificate of convenience and necessity will be issued to a proposed auto bus line which will serve a substantial population in a city much better than an existing trolley line, but, along a portion of its route will compete as to territory now adequately served if permitted to carry local passengers, the certificate being issued upon condition excluding the transportation of such local passengers. Re Woodlawn Improvement Asso. Transp. Corp. Case No. 7401, May 18, 1920. (P.U.R.1921C, 719.)

In Re Spurr, P.U.R.1918D, 105, the California Commission held that the authorization of auto-truck freight lines should not be withheld on the ground of interference with the revenue of steam railroads while operated by the government, since the government had frequently asked that encouragement be given towards the diversion of merchandise and package freight to motor trucks.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

IN RE ALLEN P. BARTHOLOMEW.

[Case No. 5326.]

IN RE JOHN J. NEIL.

[Case No. 5376.]

[No. 249.]

Monopoly and competition — Jurisdiction — Auto bus lines — Rural state highways.

1. The New York Commission cannot regulate competition on rural state highways between auto bus lines or between such lines and other carriers, since under the statute (transportation corporations law of 1913, chapter 495, § 25, as amended by Laws 1915, chapter 667) it can require a certificate of convenience and necessity only for operation in cities.

Monopoly and competition — Auto bus line — Operation in city — Indirect regulation of highway operation.

2. A certificate of convenience and necessity for an auto bus line in a city, as part of a route over a rural state highway, will not be refused for the purpose of indirectly regulating competition on the highway that cannot be directly forbidden.

Monopoly and competition — Auto bus lines — Terminal operation in city.

3. In the absence of authority to regulate competitive operation over a rural state highway, certificates of convenience and necessity will be granted for the terminal operation of auto bus lines in a city as parts of competitive operation over such highway, although one line can give sufficient service, where the city consents to the operation and the carriers enjoy considerable patronage.

[February 16, 1916.]

APPLICATIONS of Allen P. Bartholomew and John J. Neil for certificates of convenience and necessity for auto bus lines in Geneva as part of the competitive operation over the state highway to Penn Yan; granted.

Appearances: N. D. Lapham for petitioner in case No. 5326 and in opposition to petitioner in case No. 5376; Allen P. Bartholomew in person; E. C. Smith and George I. Teter for petitioner in case No. 5376 and in opposition to petitioner in case No. 5326; J. J. Neil in person; Harris, Havens, Beach, & Matson (by D. M. Beach, F. H. Parker, and Mr. Bacon) for the

New York Central Railroad Company, in opposition to both petitioners; John A. Matthews for the Pennsylvania Railroad Company, in opposition to both petitioners, and H. S. Tipton; Lyster G. Bayly for the State Department of Highways.

[1–3] **Irvine,** Commissioner: These are separate applications for certificates of convenience and necessity for the operation of auto bus lines in the city of Geneva. The purpose of each is the operation of a line from the village of Penn Yan over the same state highway to and into the city of Geneva. Both applicants have obtained consents of the local authorities of the city, and the consent granted in each case provides that no local passengers or property shall be carried from any point within the city to any other point within the city. All question of urban competition between the two applicants or with other urban carriers is therefore eliminated. The applicant Neil has been operating his line since 1914 under a certificate of convenience and necessity granted in pursuance of § 25 of the transportation corporations law as it existed prior to its amendment by chapter 667 of the laws of 1915. The applicant Bartholomew has not operated his line in the past.

By § 25 of the transportation corporations law as enacted by chapter 495 of the Laws of 1913, it was provided that—

"Any person or any corporation who or which owns or operates a stage route or bus line wholly or partly upon and along a highway known as a state route or any road or highway constructed wholly or partly at the expense of the state or in, upon or along any highway, avenue or public place in any city of the first class having a population of 750,000 or under, shall be deemed to be included within the meaning of the term 'common carrier' as used in the Public Service Commissions law, and shall be required to obtain a certificate of convenience and necessity for the operation of the route proposed to be operated, and shall be subject to all the provisions of the said law applicable to common carriers."

Chapter 667 of the Laws of 1915 amended this section so that it now reads as follows:

"Any person or any corporation who or which owns or operates a stage route, bus line or motor vehicle line or route or vehicles

described in the next succeeding section of this act wholly or partly upon and along any street, avenue or public place in any city shall be deemed to be included within the meaning of the term 'common carrier' as used in the Public Service Commissions law, and shall be required to obtain a certificate of convenience and necessity for the operation of the route or vehicles proposed to be operated, and shall be subject to all the provisions of the said law applicable to common carriers."

By virtue of this amendment, the requirement of a certificate of convenience and necessity for the operation of a route upon or along state routes or roads or highways constructed wholly or partly at the expense of the state was absolutely abolished, and a certificate is now required only for routes or vehicles operating wholly or partly upon and along streets, avenues, or public places in any city. It follows that each of these applicants has an absolute right to operate his line in the village of Penn Yan and along the highway to the city line of Geneva. No certificate is required for that purpose, and the Commission has no control over such operation and no power to regulate competition between different bus lines or between bus lines and other carriers over that portion of the route. It would be a usurpation of authority, which so far as it ever existed the legislature has taken away, for the Commission to use its power of granting or withholding a certificate to operate along city streets for the purpose of thus indirectly regulating competition over or along rural highways. It follows, therefore, that in passing upon these cases the only question presented to the Commission is whether public convenience and necessity require that either or both of these applicants, each with the right to bring passengers to the city line and to carry passengers from the city line outward, should be permitted to bring their passengers into the center of the city or to pick up their passengers in the center of the city and carry them over the streets to the city limits.

It is therefore unnecessary and even improper to consider as a distinct proposition whether one line adequately serves or might be made adequately to serve the convenience of passengers between Penn Yan and Geneva or between intermediate points and Geneva.

The local authorities of the city of Geneva, at a public hearing

at which each applicant appeared in opposition to the application of the other, granted to each its consent to operate over the city streets. The local authorities having control over ordinary street traffic, and charged with the maintenance of the streets, have therefore determined that the operation of the two lines is not objectionable as interfering with the proper use and maintenance of the city streets. The evidence shows that the applicant Neil has in the past enjoyed quite a large patronage. It also tends to show that the applicant Bartholomew, if permitted to operate, will probably enjoy a very considerable patronage. With the element of rural competition eliminated, it follows necessarily that each applicant should be permitted for the convenience of his patrons to bring them into the city and to take them up within the city for the purpose of carrying them over the highway after he reaches the city limits. For the foregoing reasons both certificates must be granted.

All concur.

Note.—California.

In Re King, P.U.R.1919F, 377, the California Commission held that a certificate of public convenience should be granted to an autostage line to enter into competition with a railroad line between certain points where it was shown that the service rendered by the railroad company was unsatisfactory and unreliable.

It was also stated that the different schedules of rates proposed by different applicants for a certificate of convenience for permission to establish an autobobile stage line in a given territory would be given consideration, where public convenience did not require the establishment of more than one line, and the different applicants were each financially able and willing to establish the line in question, and would make such schedules and additions to equipment as the requirements of travel might justify.

In Re A. R. G. Bus Co. P.U.R.1919E, 232, the California Commission held that the fact that an auto transportation company had been unable on several occasions to handle all traffic offered was not sufficient to warrant the Commission in granting an application permitting competition, where it was shown that the existing company had taken all possible steps to observe the rules governing automobile stages, particularly with reference to overcrowding.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

RE T. S. ASHMEAD et al.

RE GEORGE GRAUPMAN et al.

[Case No. 5355.]

Monopoly and competition — Policy of New York — Regulated monopoly.

1. It is the policy of the state of New York since the passage of the Public Service law to protect existing public utilities from unrestricted and ruinous competition, and by efficient regulation to compel them to furnish a high quality of service after being permitted to earn a fair return upon the investment.

Monopoly and competition — Occupied field — Street railway — Jitney buses.

2. Certificates of convenience for the operation of jitney buses in a city in competition with a street railway will be denied where the competition would interfere seriously with any further immediate growth of the railway system, upon the ground that no dependable form of transportation, good alike in winter and in summer, has yet been devised to take the place of street railways for city transportation.

Monopoly and competition — Occupied field — Street railways — Individual owners of automobiles.

3. It is immaterial in a proceeding for a certificate of convenience to operate jitney buses in competition with a street railway, that the competition comes from individual owners of automobiles instead of from a single company,—assuming the volume of competition to be the same in either case.

Monopoly and competition — Occupied field — Street railways — Jitney buses.

4. Except in cases where the existing street railway system cannot or will not supply reasonable service, the use of jitneys should be confined to streets and neighborhoods which have no available street railway service.

Automobiles — Jitneys — Operation as common carriers — Policy of New York Commission as to use of second-hand cars.

5. It is the policy of the New York Commission, Second District, not to permit the use of cheap second-hand automobiles of the touring car type as a regular means of transporting passengers at a low rate of fare over regular urban routes, except in cases of extreme urgency.

Automobiles — Operation as common carriers — Certificate of convenience.

6. The fact that jitneys furnish a pleasant mode of travel for a large number of city people who desire to patronize them is no ground for granting a certificate of convenience for the operation thereof, where the competition so created would greatly affect the revenues and the future development of the existing street railway system.

[May 16, 1916.]

PETITION of T. S. Ashmead and others for certificate of convenience and necessity for the operation of stage routes by auto buses in the city of Rochester; order denying all applications and directing the street railway company to make certain designated improvements and extensions and to reroute certain existing lines.

Appearances: Richard R. B. Powell for petitioners; Harris, Beach, Harris, & Matson and Walter N. Kernan for New York State Railways; John J. O'Sullivan and Wm. B. Fitzgerald for Amalgamated Association of Street and Electric Railway Employees.

Emmet, Commissioner: While the accompanying order indicates briefly the grounds upon which we have felt it necessary to deny this application, it seems on the whole desirable that the somewhat formal recitals contained in the order itself should be supplemented by a fuller statement of the reasons which we regard as controlling in the matter.

[1] Since the enactment of the Public Service Commissions law of 1907, the state of New York has been committed to a somewhat different policy, in respect to competition between public utility companies, from the one which was once in force here. Previously it had not been deemed wise to interfere, to any appreciable extent, with the natural workings of the competitive system in the public utility field. It had been supposed that by permitting and encouraging practically unrestricted competition between privately owned companies, the state was following the course from which the largest measure of good would accrue to the public at large. The passage of the Public Service Commissions law definitely marked the end of that attitude upon the part of our state authorities. The new law vested in the Public Service Commissions power to withhold certificates of public convenience and necessity from persons or corporations who, subsequent to the passage of the act, might desire to enter certain public utility fields which were already occupied by established enterprises. The effect of this was to make it impossible for many willing competitors to engage in certain utility enterprises without first submitting to a tribunal representing the entire state the question whether the effect of the proposed

competition might not, in the long run, be detrimental rather than beneficial to the public.

This change in policy was not actuated by any desire on the part of New York state to show favoritism to such persons or corporations as happened to be already interested in public utility enterprises at the time of the passage of the law. The far-reaching regulatory powers of the new Commissions were expected to be effectively used in compelling existing utility enterprises to give the very best service possible that the circumstances of each case permitted. It was expected that the Commissions would insist upon it that the public should for the future receive a very much better quality of service than many of these utility companies had in the past been willing, without efficient regulation, to accord. The underlying thought was that, in almost every case, the ultimate sufferer from unrestrained competition between public utilities was, necessarily, the public itself. Experience had demonstrated that competing companies, operating in a single field, were never likely to achieve such secure financial standing as to enable them, collectively, to give as good service as a single well-regulated monopoly, which was kept up to the mark by efficient state regulation, would be in a position to supply. The safeguard, of course, in all such cases —the justification for this seeming approval of the monopolistic idea—lay in the fact that, along with the power to establish a virtual monopoly, the Commission was given the power to compel these monopolies to serve the public more faithfully than had generally been the practice before the passage of the law.

Since the Public Service Commissions law has been on the statute books the Commissions have frequently exercised their new powers to protect existing utility companies against competition, which, if permitted, would have been ruinous to both competitors. They have at the same time endeavored to exercise their regulatory powers to the fullest extent consistent with the other duty imposed upon them,—the duty of permitting private capital invested in utility enterprises to earn a fair return upon the investment. On the whole it may be said that the results have justified the hopes which were entertained for this new attitude on the part of the state, toward competition between public utilities, and that the state has profited by its adoption.

[2, 3] Last year an unexpected situation arose in the business of urban passenger transportation. Large numbers of cheap or secondhand automobiles, mostly of the touring car type, appeared in nearly every city in the state as direct competitors of the existing street railroads. They carried pasesngers between points within the city for a 5-cent fare, over regularly designated routes,—the same routes, in most cases, as were already being served by the street railways. The jurisdiction of the Public Service Commission did not, prior to 1915, extend far enough to cover this so-called "jitney" method of transportation, yet the total volume of business which was at once taken away from the trolley roads was large enough to seriously menace many of these companies. Their losses were so considerable as in some cases to threaten solvency, and in nearly every case to raise the question, seriously, whether in the future our street railways would be able to maintain that steady improvement in plant and service which the public expects of them.

It was this situation which led to the passage of chapter 667 of the Laws of 1915. The jurisdiction of the Commission in respect to the issuance of certificates of public convenience and necessity was extended so as to require that every intending jitney operator should secure such a certificate from the Commission in whose jurisdiction his business was to be carried on, before he might lawfully engage in an operation of this sort. How much further than this the jurisdiction of the Commission over jitney operation was extended by the new law has not yet been fully determined. The law was hastily drawn, and the language employed is not perhaps as plain as it might be in some particulars. But that the responsibility of the Commission has been extended at least to the point of determining that in no case shall a certificate of convenience and necessity issue if the Commission to whom application has been made believes that the ultimate effect of granting the certificate will be detrimental, rather than helpful, to the community affected, there can be no doubt whatever.

The case of the present applicants has been presented by their attorney, Mr. Powell, with a clearness and ability which has impressed the Commission greatly. The conclusion to which we have finally come, however, is that the arguments advanced in

support of the application are arguments which bear very much more strongly upon the question whether the general state policy of limiting competition in public utility fields is a desirable one, than they do upon the propriety of departing from that policy in this particular instance. The conditions which we have been considering in Rochester are, as a matter of fact, precisely those which led to the enactment of chapter 667 of the Laws 1915; and if it were ever expected that the Public Service Commissions should assert the power which the law gives them to limit competition under certain circumstances in an urban-transportation field, it seems to us that this case is a proper one for such an exercise of power.

Possibly this would have appeared more clearly if a single responsible company—instead of a number of individuals whose only bond in common is that they have been represented in this proceeding by a single attorney—had applied for leave to operate enough improved motor buses to take care of the same volume of business that the individually owned touring cars included in this application would be capable of handling, over streets substantially identical with those occupied by the street railway company. The granting of a certificate to such a competitor would at once be recognized, we suppose, by every thoughtful person, as equivalent to a decision that the Commission saw nothing further to be gained by encouraging the further development of the electric railway system in Rochester. And since arrested development, in the case of any business enterprise, usually means slow death, such a decision could only be taken to mean that in our opinion the traffic needs of Rochester would best be served by a gradual replacement of the old, with the new, method of transportation. Now, as a matter of fact, the Commission believes nothing of the sort. Electric street railway transportation has by no means outlived its usefulness in cities like Rochester. On the contrary, we are of the opinion that the electric railway must for many years be regarded as the backbone of any dependable transportation system in such a city. To arrest the development of electric railways in Rochester would be to injure greatly the city's growth and future prospects. And the situation seems to us to be in no wise changed—assuming the volume of competition to be the same in either case—by the fact

that the competition comes from individual, and perhaps in some cases irresponsible, owners of automobiles, instead of from a single well-managed company. In either case the volume of competition contemplated by the present application would certainly be large enough to interfere seriously with any further immediate growth of Rochester's electric railway system. And, in our opinion, no dependable form of transportation, good alike in winter and in summer, has yet been devised to take the place of what Rochester would lose if further development of its electric railways was to be discouraged and interfered with by the state.

[**4, 5**] What, then, is the proper function of the jitney? Our answer is that, except in cases where the existing street railway system obviously cannot or will not supply the reasonable requirement of a community, the use of jitneys, for the present at least, ought to be confined to streets and neighborhoods which now have no electric railway readily available. Further than this, we seriously question, as a general proposition, the propriety of extending formal recognition at this time to automobiles of the touring car type, as a suitable form of vehicle for carrying large numbers of passengers at a low rate of fare over regular urban routes. Automobiles built for private use were never designed for such purposes as it is proposed to put them to here. Such use cannot be otherwise regarded than as unnatural and freakish. A suitable type of motor bus, admirably adapted for public use, is now available and on the market. Without actually holding that under no circumstances will the use of cheap second-hand touring cars be countenanced by the Public Service Commission of the Second District as a regular means of transporting passengers for a low rate of fare in a great city like Rochester, we feel that we ought at this time at least suggest that only in cases of extreme urgency should such cars be employed in this way. Certainly we have not been impressed with the belief that any such urgency exists in Rochester at the present time. Improvements should be made in the transportation system there, as our order indicates, but this is not the way to make them.

[**6**] We realize, of course, that in every large city people will be found who would enjoy making occasional use of the jitneys, and in so far as our present order interferes with the pleasure

of these people, we regret being compelled to make it. The problem before us would of course be a very simple one if we were not required to give any particular consideration to the effect of unrestricted jitney competition upon the general problem of transporting passengers in a large city—if all we had to do was to assist in establishing transportation facilities which would cater to the widest range of individual tastes. But if that was intended to be our only function, it must be perfectly obvious to everybody that chapter 667 of the Laws of 1915 would never have been placed upon the statute books at all. The present policy of the state with regard to this matter is plain, and it is our duty to carry out this purpose until the law under which we are acting is repealed. This would be our duty even if as individuals we disapproved of the purpose of the present law. As a matter of fact, we approve of it, and regard it as absolutely essential, from the standpoint of securing dependable transportation facilities in our larger cities, that the law should be enforced in such a case as this.

It should be understood, however, that this Commission is by no means of the opinion that a corporation like the New York State Railways should never, under any conceivable circumstances, be subjected to competition from other groups of investors who are willing in a businesslike way to risk their money in supplying better transportation facilities to the people of Rochester. A situation may yet arise which will require the bars to be let down, and the railway to be left to struggle for existence without further state protection against wasteful competition. Protection is being extended to it now because we feel that, on the whole, the existing street railway system of Rochester—viewed not as a mere money-making machine operated for the benefit of its stockholders, but as a public agency—is distinctly worth saving in the interest of the people of Rochester. It has performed very valuable services in the upbuilding of Rochester, and seems now to be in a position where, with the help of the state instead of its hostility, it will be able to solve the Rochester transportation problem satisfactorily. A further effort should be made to get the very best results possible out of such a system, before condemning it as outworn, or contributing toward its eventual undoing. If that effort fails, we will, as our

order states, be prepared to give further consideration to alternative methods of supplying Rochester with a proper transportation system.

In reaching this conclusion, we have acted in strict accord with what we understand to be the purpose of the statute from which our powers have been derived, and we hope that our decision will, on the whole, be approved by the thoughtful citizens of Rochester.

All concur.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

RE TROY AUTO CAR COMPANY, INC.

[Case No. 5095.]

Procedure — Application for certificate of convenience and necessity — When technical error may be disregarded.

1. A pending application for a certificate of convenience and necessity for the operation of an auto bus line, based upon an ordinance permitting the applicant to operate for a certain period, which has been extended by a later ordinance, may be treated as if it were based upon the new ordinance, where the latter in no wise affects the disposition of the case on its merits.

Franchises — What does not constitute — Permit to operate auto bus line.

2. The grant of municipal consent under a statute (New York Laws of 1915, chapter 667), requiring such consent for the operation of an auto bus line, is not the granting of a franchise within the meaning of § 37 of the Second-Class Cities Law, providing that in case of a proposed sale or lease of a franchise the ordinance must provide for a disposition of the same at public auction.

Certificate of convenience and necessity — Definition — Necessity.

3. It is not necessary for an applicant for a certificate of convenience and necessity, authorizing the operation of an auto bus line, to show that an absolute necessity exists therefor, in the sense that no such necessity would exist if there were already in the field a carrier prepared to furnish and actually furnishing adequate facilities for transportation; since a public convenience and necessity exists when the proposed facility will meet a reasonable want of the public, and

supply a need, if existing facilities, while in some sense sufficient, do not adequately supply that need.

Automobiles — Bus line competing with street railway — When public necessity justifies.

4. Public convenience and necessity for the operation of an auto bus line in competition with a street railway is sufficiently shown where it appears that there is such a diversion of the routes and so much greater convenience afforded by the stage route that it may fairly be said that it supplies a want of the public not already adequately met;—as, where only 22 per cent of the applicant's traffic originates and ends in a district where the competing routes are less than 300 feet apart; where 78 per cent of the traffic comes from a territory in which the competing lines are over 900 feet apart; where 22 per cent of applicant's traffic comes from a district in which patrons have to walk considerably more than the latter distance; and where the auto bus line has carried 770,000 passengers during a period of fifteen months.

(CARR, Commissioner, dissents.)

[November 23, 1916.]

APPLICATION for a certificate to operate a bus line in the city of Troy, Rensselaer county; granted.

Appearances: Crawford & Cogan (by Henry J. Crawford and W. H. Cogan) 128 State street, Albany, New York, as attorneys for applicant; Lewis E. Carr, John E. MacLean, and T. K. Wellington, Albany, New York, for the United Traction Company in opposition; W. B. Fitzgerald, 358 Fourth street, Troy, New York, member of the general executive board of the street railway employees; Joseph F. McLaughlin, president of the local union of Troy, and Joseph S. Droogan, president of the local union of Albany, in opposition to the granting of the certificate applied for.

Irvine, Commissioner: The Troy Auto Car Company, Inc., seeks a certificate of convenience and necessity under chapter 667 of the Laws of 1915 for the operation of a stage route by motor vehicles in the city of Troy. The application is resisted by the United Traction Company operating a system of street railways in the same city.

[1] Certain individuals, apparently as copartners, commenced the operation of auto buses on the route involved and hereinafter described shortly prior to the enactment of the law of 1915. After the enactment of that law the Troy Auto Car Company

was incorporated by these individuals, and consent of the city of Troy was obtained to the operation of the line. Application was made to the Public Service Commission for a certificate of convenience and necessity, but on the hearing it developed that the incorporation was under the General Corporation Law, and not under the Transportation Corporations Law. The application was therefore withdrawn, and the company was reincorporated under the Transportation Corporations Law and the application renewed. The original consent of the city of Troy was for a period of one year, and the original and amended applications were based on this consent. By later ordinance this consent has been extended for a further period of five years. Technically, perhaps, a new petition should have been presented for a certificate based upon the later ordinance, but a hearing has been held since its enactment and the expiration of the original consent, the new ordinance was offered in evidence, and no substantial right is impaired by treating the pending application as if it were based on the new ordinance, which in no wise by its nature affects the disposition of the case upon its merits.

The city of Troy extends for several miles north and south on the east side of the Hudson river. Its growth to the eastward is impeded by hills, so that the width of the densely built part from west to east is comparatively small. Indeed its shape was characterized by witnesses at the hearing as resembling a shoestring. The stage route commences almost at the northern end of the city, extends along Fifth avenue in "Upper Troy," which becomes Sixth avenue farther south, then, avoiding a very slight eminence known as Mount Olympus, goes west to Fifth avenue in the main part of the city, and extends to Congress street in the business center. Looping around four blocks, it returns to Fifth avenue, and, by the same route, to the point of beginning. The United Traction Company has for many years maintained and now maintains a line of street railway beginning in Waterford, crossing the Hudson river and reaching Second avenue in "Upper Troy" at Twenty-sixth street, one block north of the terminus of the stage line. The street car line extends down Second avenue and River street, reaching and passing the business center. The maps in evidence show that the stage route is something more than 3 miles in length measuring from Twenty-

fifth street, its northern terminus, to the loop. From this loop north to Second street, a distance of about 10,000 feet, the routes of the stages and the street cars are substantially one block apart. The distance ranges from 244 feet to 354 feet. From Second street north to Eighth street, a distance of about 3,200 feet, the routes diverge. From Eighth street north about 7,200 feet they are from 944 to 952 feet apart. The operation of the stage line is by means of four large auto buses operating on a headway of fifteen minutes. The United Traction Company operates over a portion of its route in the competitive district thirty-four cars an hour, and over the northern part of the line thirteen cars an hour. In rush hours this service is somewhat increased. The street railroad line is through the greater part of its distance very near the Hudson river, and passengers using it arrive from or are destined to points to the east. The stage line is east of the street car line, and after it diverges north of Second street passes approximately through about the center of the northern part of the city lying between the river and the hills.

[2] Objection is made to the granting of the proposed certificate, upon the ground that the consent of the city was in contravention of § 37 of the Second-Class Cities Law, providing that "in case of a proposed sale or lease of real estate or of a franchise, the ordinance must provide for a disposition of the same at public auction," etc. We do not think that the municipal consent to the operation of a stage route required by chapter 667 of the Laws of 1915 is a franchise within the meaning of the Second-Class Cities Law. It involves no permanent structures, and no permanent occupation of public property. It involves merely the operation of vehicles over public streets improved and maintained for the purpose of vehicular traffic, an operation that would be entirely lawful without municipal consent, except as this statute requires such consent for this particular purpose. It is not a grant of any public right. It disposes of no public property by sale, lease, or otherwise, nor does it surrender or delegate any sovereign or governmental right. It merely permits what, in the absence of restrictive legislation, would be a normal and lawful use of a public highway.

[3, 4] Approaching the merits of the application, it is contended in effect that before the Commission may issue its certifi-

cate it must be made to appear that the proposed operation is not only convenient, but necessary, for public purposes, and that no necessity exists when there is already in the field a carrier prepared to furnish and actually furnishing adequate facilities for transportation. There can be no doubt, when the language and the history of the act of 1915 are considered, that the principal object of the act was to protect street railroad corporations from unjust and ruinous competition by "jitneys." Street railroads require for their operation large capital investments, and the law requires them to pay a large portion of the expense of constructing and maintaining street pavements. Those who embark their money in such enterprises are entitled to reasonable protection in the public interest. The views of the Commission as to the purpose and construction of the law and the manner in which it is to be administered have been so well stated by Commissioner Emmet in Gray's Petition, decided October 20, 1915, Opinion 231 (N. Y.) P.U.R.1916A, 33, and Re Ashmead, decided May 16, 1916, Opinion 265 (N. Y.) P.U.R.1916D, 10, that they need not be here repeated. In applying the principles therein set out to the present case much difficulty is presented. There is no doubt that the operation of the applicant is in direct competition with that of the traction company throughout the entire route. It can by no means be assumed that every passenger who uses the stage route would use the street cars if a stage route did not operate, but it is safe to assume that in the absence of the stage route a very large majority of its patrons would use the street cars. It would seem, furthermore, that the number of cars operated by the traction company in the competitive district is sufficient to carry the traffic, and it would seem *a priori* that the street car operation on a headway varying from five minutes to less than two minutes would invite passengers away from automobile transportation on a headway of fifteen minutes, even if a large portion of the passengers should be required to walk a greater distance in order to reach street cars. In spite of this theoretical consideration, the fact confronts us that during fifteen months' operation of the stage route its buses carried 770,852 passengers. This is an absolute demonstration that many people of the neighborhood concerned regard the stage route as a superior convenience. As already

stated, throughout the southern part of the routes the stage route and street car line are less than 300 feet apart, and if that portion alone were involved we would not hesitate to hold that permanent public convenience would better be subserved by compelling a portion of the passengers to walk that much farther and insure good service on one route, rather than to promote a competition by two parallel routes which might cripple or at least impair the service of each. Evidence at the hearings, and inspections made by officers of the Commission, show that only about 22 per cent of the applicant's traffic originates or ends in this closely competitive district; 78 per cent consists of passengers boarding or alighting north of Eighth street, where the lines are over 900 feet apart. Around the extreme northern end of the stage line is a somewhat sparsely settled neighborhood whose residents can reach the street cars only by more or less indirect routes, requiring them to walk a considerably greater distance than the direct distance between the two lines. This neighborhood furnishes about 22 per cent of the total patronage of the stage route.

Summing up the facts we find that the street car line is at the extreme western edge of the city while the stage line operates approximately through its center, and that therefore a great many of the residents can reach the stage line more conveniently than the street car line; that approximately one fourth of the patrons of the stage line are so situated that access to the street car line is decidedly inconvenient, and that the carrying of over 770,000 passengers in fifteen months demonstrates that a large number of the residents consider the stage line a real convenience. On the other hand, the street railroad furnishes in some respects superior accommodations, and a very large proportion of the 700,000 fares would, in the absence of the stages, have gone into the treasury of the traction company and to that extent have placed it in better position to serve the public.

Has a public convenience and necessity been established? If the terms be separated and the word "necessity" be given a strict construction, the answer would be that a public convenience had been established, but no necessity. We cannot, however, adopt the theory of separating the terms and giving to the word "necessity" such a construction. Strictly speaking, the street car

line itself is not a public necessity. People walked or rode in horse-drawn vehicles before street cars were known. They rode in horse cars before electric cars were known. They could do so again if required. Well within the memory of those no older than the writer of this opinion, Broadway in New York was without any means of transportation except by horse-drawn stages. Fifth avenue is in that condition to-day. No European city had street cars. Those cities existed and their residents lived and got back and forth. Had the Public Service Commissions Law been in effect when tramways were first exploited a certificate of convenience and necessity should not have been denied because people could ride in stages. When electric railways were introduced a certificate should not have been denied because people could ride in horse cars. Certificates would and should have been granted although the result might have been ruinous to the powers of stage routes in the one case and of horse railroads in the other. It was not intended by the law to stop all progress by denying opportunities to new forms of transportation, merely for the purpose of protecting investments made in obsolescent forms. Not that we deem electric street railways obsolescent, or auto buses as seriously threatening their existence. We are speaking merely for purposes of illustration. The phrase "convenience and necessity" as used in the law is not to be split in two. If an enterprise is necessary it is certainly convenient, so that if it be required that a general necessity be established the word "convenience" would be superfluous. Chief Justice Marshall said in M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579: "It is essential to just construction, that many words which import something excessive should be understood in a more mitigated sense,—in that sense which common usage justifies. The word 'necessary' is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison, and is often connected with other words, which increase or diminish the impression the mind receives of the urgency it imports." So here, the word "convenience" is connected with the word "necessity," not as an additional requirement, but to modify what might otherwise be taken as the significance of necessity. Chief Justice Marshall was considering the phrase "necessary and proper" when he said: "If the word

'necessary' was used in that strict and rigorous sense for which the counsel for the state of Maryland contend, it would be an extraordinary departure from the usual course of the human mind, as exhibited in composition, to add a word the only possible effect of which is to qualify that strict and rigorous meaning." So here, to analyze the phrase and to attempt to give each word a separate meaning would be an extraordinary departure from the usual course of the human mind as it would prefix a word wholly meaningless when taken in connection with a more rigorous word following. Taking the phrase as an entity, it does not mean to require a physical necessity or an indispensable thing. It is dangerous to undertake to formulate abstract definitions in deciding a concrete case, but we take it that for such purposes as are involved in this and similar applications a public convenience and necessity exists when the proposed facility will meet a reasonable want of the public and supply a need, if existing facilities, while in a sense sufficient, do not adequately supply that need. This case is unusually close, but on the whole we are of the opinion that there is such a divergence of the routes and so much greater convenience afforded by the stage route that it may fairly be said that it supplies a want of the public not already adequately met.

Carr, Commissioner, dissenting: I am unable to agree in all respects with the opinion of Judge Irvine in this case, because I feel that an unwarranted hardship is likely to be inflicted upon an existing carrier if we dispose of it in the manner suggested by him. It is a fact well known by this Commission that some of the lines of the United Traction Company in the city of Troy are unprofitable. If the bus line competition, which now exists in Troy and which it is sought to have this Commission legalize, is continued, it is, I believe, undisputed that the traction company will be deprived of a substantial revenue which it otherwise would earn by its lines extending to what was formerly known as North Troy and Lansingburgh. Whether the traction company should be subjected to the loss of this revenue, which it undoubtedly needs to maintain proper service in that portion of the city of Troy, and yet be required in the interest of the public to maintain its present service there, is, to my mind, the controlling

question in this case. The stage route now being operated by the petitioner extends from Fifth avenue and Congress street in Troy north to Second street, a distance of approximately 2 miles, and is substantially one block away from the lines of the traction company, the distance ranging from 244 to 354 feet; from Second street north to the end of the route, the bus line diverges from the street car lines until they are approximately 950 feet apart. It may probably be fairly assumed that in the territory south of Second street public convenience and necessity do not require the operation of the bus line, and that no proof could be offered which would in any way justify the granting of a certificate of convenience and necessity to it under the situation as it now exists, having in mind that reasonably adequate street car facilities are provided in that portion of the city of Troy. That being so, we should then consider what the requirements are in that portion of the city north of Second street. There is no question raised as to any inadequacy of the street car service given by the traction company north of Second street, but the petitioner seeks to justify its application for a certificate upon the ground that the public is better accommodated by the bus line than by the street cars. Undoubtedly many of the passengers now carried by the bus line in the territory north of Second street would and could, with little or no inconvenience, use the cars of the traction company if the bus line were not in operation, and probably did patronize the traction company before the bus line started. If this is true, then the traction company is deprived of that revenue. Notwithstanding this, however, we must seriously consider whether the public is entitled to another means of transportation which may be more convenient for it, regardless of whether an existing carrier may be deprived of earnings if such other transportation service should be authorized by this Commission. In considering this question of convenience, we must give thought to more than the mere desire to have the vehicles of the carrier pass in close proximity to the abodes of intending passengers, and to the distance which must be traversed in order to reach those vehicles.

Where the lines of the traction company and the bus route are at the most not exceeding 952 feet apart, it is doubtful whether we can properly say that this in and of itself makes the

bus line a necessity for the people in the northern part of the city of Troy. There can be no dispute but what it becomes a great convenience, but this fact, standing by itself, is not sufficient to justify this Commission in depriving the existing carrier of an amount of revenue which may be just sufficient to enable it to earn a slight return on the value of the property which it used for the public benefit. To my mind there are three propositions which must be considered in order that we may make a proper disposition of this case, and they are as follows:

1st. Will the proposed auto bus service not only be convenient for the public, but is it a necessity throughout its proposed route or any portion thereof?

2d. If a certificate of convenience and necessity is given to the bus line as requested, will it result in giving the bus line such a substantial portion of the traffic along its route which would otherwise go to the traction company that the traction company will suffer such a loss in revenue as to make it necessary to curtail the service now given along the lines with which the bus line will compete?

3d. If the earnings of the traction company in the portion of the city of Troy north of Second street are seriously reduced by the operation of the bus line under the authority of this Commission, can the people in that portion of the city of Troy still insist before this Commission that there should be no curtailment of the service on the lines of the traction company, and could this Commission require the former service to be maintained notwithstanding the reduction was justified because of the action of this Commission in legalizing the operation of the bus line?

The first question has been discussed somewhat in the earlier part of this opinion. Beyond what is there said the question still remains as to whether or not the public should be required to inconvenience itself to the slightest extent for the purpose of using the facilities of the existing carrier, the United Traction Company. Unquestionably in unpleasant weather it is convenient to have the facilities of the common carrier at the most available place for the intending passenger; in fair weather it makes little or no difference to the average person if the extreme distance which must be walked does not exceed the length of three short city blocks, which is the maximum distance in the

present case. So far as the route south of Second street is concerned, nothing in this case proves that the bus line is a necessity or would be a convenience. North of Second street there is some proof that it would be a convenience, but very little, if any, that it is a necessity, excepting at the northern end of the stage route, where the bus would be much more convenient than the street cars. This territory at the north end of the bus line provides about 22 per cent of its business. Between Second and Eighth streets the lines diverge until they are approximately 900 feet apart. The distance between Second street and Eighth street is about 3,200 feet, so that in this particular territory the necessity for the stage route does not exist to any marked degree excepting in the vicinity of Eighth street, and the public convenience probably increases in the same proportion as the distance between the route of the bus line and the trolley line from Second street to Eighth street. Therefore it seems to me the most that can be said is that the Commission might, under proper conditions, be justified in granting a certificate of convenience and necessity for the operation of a bus line north of Second street if it were possible to do so, but that it ought not to be granted for the territory south of Eighth street.

With regard to the second question, the proof is that at least 22 per cent of the traffic of the bus line originates and ends in the territory south of Second street, and that 78 per cent of its revenue is derived from passengers carried to and from the territory north of Eighth street. Few, if any, passengers board the buses north of Eighth street for the purpose of riding north,—their destination is south of Eighth street. Of the revenue derived from passengers north of Eighth street approximately 22 per cent is supplied from the neighborhood at the extreme north end of the stage line, where it is not convenient for the people to use the lines of the traction company, although some of this traffic undoubtedly went to it before the bus line began to operate. We therefore have a situation where probably at least 78 per cent of the revenue of the bus line is derived from passengers who would otherwise use the lines of the traction company. The total revenue of the bus line for fifteen months was approximately $38,500, so that the earnings of the traction company were probably reduced at least $30,030 due to the operation of

the bus line. We have no evidence in the case to show exactly the effect which this had on the traction company, but it goes without saying that this must of necessity be a serious loss to the lines running through the northern portion of the city of Troy. It might mean that by losing this revenue these lines operated at a loss, whereas without the loss the operations might have shown a profit. There is nothing in the case to show what the real fact is. Knowing the situation in Troy as regards the traction company, it can safely be said that this loss has a material effect on its welfare so far as the Troy division is concerned. If 78 per cent of the passengers of the bus line is provided with reasonably good transportation facilities by the lines of the United Traction Company, we can properly say that not withstanding this fact the petitioner should be granted a certificate of convenience and necessity because it will be somewhat more convenient for 56 per cent of the passengers to use the bus line on Fifth avenue rather than to take the trolley on the streets where it now operates north of Eighth street? In my opinion we cannot do this and deal fairly with the traction company, having regard to what it is sought to accomplish by the regulation of public utilities as contemplated by the laws of the state of New York. The policy of the state as it has been developed by this Commission is to protect the existing carrier so long as it provides reasonably good facilities for the public, and not to allow a competing carrier to come in unless the situation is one where the volume of business is such that the existing carrier is unable to handle it, or fails to provide proper facilities and to give reasonably good service. If the Commission should grant the certificate of convenience and necessity in this case it would be in direct contravention of the policy which has heretofore been favored in this state because the traction company is giving good service in the territory in which the bus line wishes to operate, and there is not such a volume of traffic that the traction company is unable to properly handle the same.

With regard to the third question, it is quite possible that as a result of the granting of this certificate of convenience and necessity as requested the traveling public in the northern portion of the city of Troy may suffer considerable inconvenience. If the traction company continues the operation of its cars as at

present, and after a fair trial it is demonstrated that the bus line is depriving the company of such an amount of revenue as to make the operation of all the cars a losing venture, then it must be conceded that the traction company would be justified in reducing the service in the northern part of the city. When this is done, what is the result? The people who patronize the trolley lines are penalized because the people in another near-by portion of the city desire to have the bus line, and the only redress they can obtain is to make an application to this Commission for a restoration of the former service. If the facts developed upon such an investigation show conclusively that, but for the operation of the bus line, the earnings of the traction company would be sufficient to justify the Commission in requiring the continuation of the existing schedule, then an order to that effect would undoubtedly be made. On the other hand, if it were shown that by reason of the invasion of its territory by the bus line, its operating revenue was materially reduced, then we would not be justified in requiring increased service. As a result, the people who have been accustomed to using the lines of the traction company would in a measure be punished because of the action of the Commission in granting the certificate of convenience and necessity to the bus line. In other words, this would not be a question of the greatest good for the greatest number, but of the greatest good for a small percentage of the population of the city as against the convenience and welfare of a very large percentage of the population. It seems to me that from this standpoint alone the operation of the bus line, at least south of Eighth street, ought not to be permitted by this Commission. Particularly am I convinced that this is right, because if an application were pending before the Commission for a certificate of convenience and necessity for another trolley line over exactly the same route as asked for by the bus line, the Commission would not be able to justify the granting of such a certificate. Why it should be any different because it is a bus line, I am unable to comprehend.

The unfortunate part of this whole situation is the fact that the lines of the traction company which serve that portion of the city north of Second street operate along the western edge of the city adjacent to the Hudson river, while the stage route

is operated practically through the center of this territory. The traction company, therefore, is the victim of its location, which is due to the fact that when this line was originally located the situation as regards traffic was entirely different. The line of the traction company with which the bus line competes operates northerly from the Green Island bridge on River street and Second avenue until it reaches the Waterford bridge. This is a portion of the route which was originally established by the Troy & Lansingburgh Railroad many years ago from the Iron Works, in Troy, to Waterford. Presumably at that time the public was reasonably well accommodated by the location in Troy near the river, because the city was not built up as far east as at the present time. In the course of time the lines were electrified and became a part of the Troy City Railway, which in turn became a part of the United Traction Company. The trolley line on the portion of River street and Second avenue above referred to throughout its entire length is double tracked and the street is paved. The traction company pays taxes based upon a large assessment for this portion of its line. It is obliged to earn a substantial revenue in order to meet these taxes, and in addition, it is obliged to keep the pavement between its tracks and for 2 feet outside thereof in good condition. No burden of this kind falls upon the bus line. Whatever it may contribute to the city is practically nothing as compared with the payments made by the traction company towards the support of the municipal government. In addition to this, the traction company is obliged to maintain power stations and car barns to house its equipment; these are also taxed for the support of the government.

While nothing appears in the record upon this particular point, yet it may possibly be that the people in Troy have been disinclined to permit the operation of street cars upon Fifth avenue along the route traversed by the bus line, preferring to keep this avenue free from street car traffic. If that is true, ought the traction company to be punished because of this desire on the part of the city, and should another carrier be permitted to operate over this route merely because it does not lay rails in the streets and erect poles and wires for the purposes of its business? The situation is one where all of these questions should be

thoroughly considered to the end that complete justice may be meted out to all parties, having in mind, above all things, the facilities to which the public is entitled. Every community of the size of the city of Troy must realize that while it may not be thoroughly satisfied with its transportation system, yet, if an attempt were made to divide this business between two carriers, the result would probably be that neither one of them would earn enough out of the business to warrant the giving of first-class service. On the other hand, if the business is handled by one carrier then the regulating power of the state will be used to the end that the community may obtain the best possible service due, regard being had, of course, to all other conditions which have a bearing upon the transportation situation. If a bus route in Troy can be operated so as to serve the public and at the same time not cause material harm to an existing carrier, then it ought to be favored, and this is so, even though there may be some competition between the two carriers, provided it would not cause serious injury, and where the convenience of the public would weigh much more heavily than the trifling loss which might be caused by competition. I realize that this is what may be termed a "border line" case in the matter of competition between bus lines and street railways, and yet I feel that the situation is one which ought to be worked out with little or no damage to either party. However, it will probably be found that if the bus line is not permitted to operate throughout its entire length as proposed, it will be unable to earn a sufficient revenue to justify its continued operation. This in and of itself is one of the best arguments for refusing the certificate of convenience and necessity, because it is conclusive proof that the bus line, in order to live, must derive its revenue from traffic now being handled by the traction company, and when this state of affairs apparently is bound to exist where a certificate of convenience and necessity is given, something more than has been presented in this case must be forthcoming in order to justify this Commission in approving and authorizing such competition. Inasmuch as this Commission probably has no power to grant a certificate of convenience and necessity which in its terms in any way attempts to abridge the grant of the city authorities, the situation cannot be worked out at the present time to conform

to my views. I therefore think that the Commission ought not to grant the certificate of convenience and necessity as set forth in the petition.

Note.—The New York Commission, Second District, has granted certificates of public convenience and necessity for the operation of systems of motor busses in the following cases:

Re Van Ostrand, Case No. 5349, Jan. 12, 1916, to operate a motor-vehicle or stage line as a part of a line from the city of Geneva to the village of Rushville and intervening points, but not to carry passengers locally from one point to another in the city of Geneva, in accordance with the consent granted by the city and subject to present and future ordinances.

Re Butts, Case No. 5340, Jan. 13, 1916, to operate a bus line over a specified route in the city of Oneonta for transporting passengers and baggage between specified hotels and railroads, upon condition that the fares shall be not less than 10 cents for each passenger carried over the whole or any part of the route.

Re Wilson, Case No. 5289, Feb. 24, 1916, to operate a motor-bus line between the city of Fulton and the village of Hannibal, subject to the consent heretofore granted by the city of Fulton and all present and future ordinances of the city of Fulton, and statutes and requirements of the state of New York, such certificate not to be assignable without the consent of this Commission; and upon the further condition that the petitioners shall not carry any passengers from one point to another within the city of Fulton, but such line shall be operated for through passengers only from any point within the city of Fulton to points outside and from points outside to any points within the same.

Re Main, Case No. 5404, March 7, 1916, to operate a system of motor busses in Albany and between Albany and Guilerland Center, subject to franchise provisions, upon condition that no passengers shall be carried from points within the terminal and points east of Magazine street in Albany, the purpose of the present application being to serve the convenience of the public outside of Albany.

Re Paige, Case No. 5406, March 16, 1916, to operate a stage route by auto busses in the city of Ogdensburg and between Ogdensburg and Alexandria Bay, subject to ordinance and statutory provisions, it appearing that, although a railway company operated on the same street, no appearance or objection was made, and applicant proposes to charge for local passengers within the city the rate allowed by city ordinances to licensed hackmen.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

RE EDSON U. GAISER.

[Case No. 6437.]

Monopoly and competition — Rural bus lines — Extension in city — Power of Commission — Automobiles.

The New York Public Service Commission, First District, will not withhold a certificate of public convenience and necessity for the extension of a rural bus auto line into a city merely on the ground of its effect upon competing lines outside of the city over which the Commission has no jurisdiction.

[June 6, 1918.]

PETITION under chapter 667 of the Laws of 1915, for a certificate of convenience and necessity for the operation of a stage route by autobusses in the city of Niagara Falls as part of a route to Lewiston Heights, Lewiston, and Youngstown; granted.

Appearances: Dudley & Gray, Niagara Falls, for petitioner; Morris Cohn, Jr., Niagara Falls, for International Railway Company; George C. Riley, Buffalo, for Niagara Gorge Railroad Company and Lewiston & Youngstown Frontier Railroad Company; B. L. Jones, Buffalo, as Manager, John Edbauer, Buffalo, as General Passenger Agent, and E. E. Nichlis, Niagara Falls, as Superintendent of Niagara Gorge Railroad Company and Lewiston & Youngstown Frontier Railroad Company; Lieut. Charles S. M. Asinari, U. S. A., in person; N. J. McDonough, Buffalo, Division Engineer for State Highway Department.

Hill, Chairman: The petitioner has, pursuant to law, procured the consent of the authorities of the city of Niagara Falls, to the operation of a bus line from a central point in said city to the northerly line of the city, and now requests from the Commission a certificate of convenience and necessity pursuant to chapter 667 of the Laws of 1915.

The petitioner discloses that, after leaving the city line on the northerly course, his line is intended to operate to and beyond Lewiston; the scheme being to serve, both from the north and the south, a country club now being established between Niagara Falls and Lewiston.

The effect of the statute referred to was to deprive the Commission of any authority it theretofore possessed, by the issuance or withholding of certificates of convenience and necessity, to control or regulate competition of bus lines or stage routes so far as they operate outside of the limits of incorporated cities, either among themselves or with other carriers.

The consent of the local authorities forbids the carrying of passengers between points within the city, and therefore the only question presented is whether public convenience and necessity require that the applicant, having already the right to bring passengers to the city limits and carry them from those limits outward, should be permitted to bring them within the city and to pick them up within the city and carry them outward to the city limits. Objection is made on the part of the International Railway, the Niagara Gorge Railroad, and the Lewiston & Youngstown Frontier Railroad Companies, which operate tracks paralleling the petitioner's proposed route, but of course entirely upon the ground of the effect of the competition in that part of said route which lies entirely outside and north of the city line and over which the Commission has no jurisdiction whatever.

The Commission has heretofore held that it would be a usurpation of authority for the Commission to use its power of granting or withholding a certificate to operate along city streets for the purpose of thus indirectly regulating competition over or along rural highways. Re Bartholomew, 5 P. S. C. (2d Dist. N. Y.) 96, P.U.R.1916C, 87.

The rights of the city have presumably been properly protected by the terms of the consent granted by the authorities, and the objecting railroads have been protected from competition by the terms of that consent so far as concerns intracity traffic. The good faith of the applicant is not questioned, and the evidence discloses that public convenience and necessity will be met by the petitioner being allowed to supply transportation to the new country club, which will not be reached by any other public conveyance.

The certficate will therefore issue, and an order may be entered accordingly.

All concur.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

RE GEORGE W. GRAVES.

[Case No. 7562.]

Automobiles — Certificates — Carriage of freight — Necessity.

1. Under §§ 25 and 26 of the New York Transportation Corporations Law, no certificate of convenience from the Commission is required for the operation of an automobile line carrying freight exclusively.

Certificates of convenience — Auto stage lines — Providing through route.

2. A certificate of convenience, to operate an auto stage service,

---

Note.—Competition with Railway.

In Niagara Gorge R. Co. v. Gaiser (1919) 109 Misc. 38, 178 N. Y. Supp. 156, it was held that the operator of a bus line running partly in a village and partly outside competing with an electric railway was required to obtain a certificate of convenience and necessity from the Public Service Commission under the New York Laws of 1919, chapter 307, amending the Transportation Corporations Laws, § 26. The court said: "The effect of the amendment of 1919 was to restore, to a considerable extent, the jurisdiction of the Public Service Commission granted in the provisions of § 25 as it was enacted in 1913, of which the Commission had been deprived by chapter 667 of the Laws of 1915. As the section read prior to 1915, the certificate of the Commission was necessary for bus lines operated over state routes or state highways outside of the city, and the legislative intent to return this jurisdiction is evident upon a reading of the 1919 amendment. The amendment of 1915 had subjected the suburban railways of the state to much competition, resulting in what is generally known by communities to be practical bankruptcy, and almost universal applications for increases in fares; and undoubtedly in recognition of this situation, and of the inequity of permitting competing bus lines to use, without license fee or public service regulation, the highways and streets, for which in many instances the railroad companies had been required, by the terms of their franchises, and under the general Railroad Law, to pave, the law was restored in its general features to that of 1913, and the option was given every village and town to bring itself within the provisions of the amended section requiring local consent and certificates of public convenience and necessity from the Public Service Commission. This review of the legislation disposes of the suggestions of counsel for defendant that anything sinister exists in the amendment of 1919." (P.U.R. 1921C, 636.)

will not be granted for the purpose of affording through service between designated points where existing lines render adequate service between the intermediate points.

[June 15, 1920.]

PETITION for certificate of public convenience and necessity for operation of stage route for passengers and freight; application for certificate for passenger service denied, and certificate for freight service held unnecessary.

Appearances: Hugh S. Lavery, for the applicant; James McPhillips and C. E. Fitzgerald, for the Hudson Valley Railway Company, the Delaware & Hudson Company, the Chestertown-Warrensburg Stage Company, the Warrensburg-North Creek Stage Company, the Riverside & Schroon Lake Stage Company, and the Warrensburg-Glens Falls Express; Chambers & Finn (by Mr. Finn) for the Glens Falls-Bolton Stage Line, Incorporated.

Kellogg, Commissioner: Upon the hearing in this matter it developed that the petitioner desires to put in operation both passenger and freight auto bus lines between the city of Glens Falls and the unincorporated village of Schroon Lake, a distance of about 48 miles. He proposes to operate these enterprises separately, the freight to be carried in vehicles distinct from the busses carrying passengers.

[1] It has been uniformly held by this Commission that no certificate of convenience and necessity from this Commission is required for the operation of a line carrying freight exclusively. This interpretation of the law is based upon the wording of §§ 25 and 26 of the Transportation Corporations Law, in connection with the decision of the supreme court, in Public Service Commission v. Hurtgan, P.U.R.1916A, 547, 154 N. Y. Supp. 897, 91 Misc. 432, which seems to limit the application of the sections to passenger carrying lines.

Evidence was given by substantial merchants of Glens Falls and Schroon Lake to the effect that the present transportation of packages and parcels was inadequate, and that public convenience would be progressed and public necessity served by granting an extension of permission to the applicant to carry freight. On the other hand, it was contended by the competing

line that the present service was inadequate, which contention was also supported by certain patrons from Chestertown and Schroon Lake.

This mooted question, however, need not be considered and decided here because the applicant, if he sees fit, may establish and operate without our certificate his freight carrying line, as under his plan it is in no wise connected with his proposal to carry passengers by other vehicles.

This leaves for determination a question only as to whether the passenger traffic on the proposed route is at present adequately served.

The entire route is covered at present by various carriers, and transportation may be had between the termini of the proposed route if sufficient changes are made.

Commencing at Glens Falls and running northerly to Lake George, a distance of 9 miles, the Delaware & Hudson Company operates a steam railroad transporting passengers. Between these points the Hudson Valley maintains a trolley line, operating a two hour schedule throughout the year, which schedule is largely increased in the summer season. The Glens Falls-Bolton Stage Line also operates between these points. The Hudson Valley Railway rendering the service stated extends still further northerly to Warrensburg, 6 miles beyond Lake George.

Chestertown is an unincorporated village about 12 miles northerly of Warrensburg. There is a stage line between it and Glens Falls, but the evidence indicates that its operations are largely, if not entirely, confined to freight carrying and it does not, at least to any great extent, transport passengers.

There is, however, a passenger carrying stage route which connects with the Hudson Valley Railroad at Warrensburg, proceeding northerly to Chestertown, and thence westerly to Riverside and North Creek. There is another stage route which runs from Riverside to Schroon Lake. This line progressing easterly retraces the course of the Warrensburg-North Creek line about 2 miles to Loon Lake, whence it turns northerly and proceeds to Schroon Lake.

During the summer time, the schedules are arranged so that passengers may make connections at Loon Lake between these stage lines, going in either direction. On unusual occasions

both these stage lines last mentioned are overcrowded. This occurs only a few days of each year, at which time additional accommodations are supplied by the owners.

During a few weeks of the summer, these busses run well loaded, but still usually somewhat short of capacity, and during the remainder of the year, the travel is very light, only a small percentage of the capacity of the vehicles being occupied.

Although a transfer is necessary, I think the two bus lines in question give adequate facilities for transportation of passengers between Schroon Lake and Warrensburg, and southerly of that point the service of the Hudson Valley Railway, together with the Delaware & Hudson Company, and the Glens Falls-Bolton Stage Line, south of Glens Falls adequately meet all demands.

Of course it would be more convenient for the few passengers who wish to make the through trip to make it without transferring, and the consequent delay which frequently and unavoidably occurs to the through travelers would be very slight and entirely insufficient to maintain the line. It would, of course, if permitted to operate, derive much of its revenue from passengers carried largely between intermediate points and thus be in direct competition with some one or the other of the local utilities now in operation.

[2] It has been lately held by the California Railroad Commission in Re F. A. Wilson & Company, P.U.R.1920C, 635, decided February 11, 1920, that a certificate to operate an auto stage service will not be granted for the purpose of affording through service between designated points where existing lines render adequate service between intermediate points.

This, I think, is consistent and entirely in line with the practice of this Commission to discourage competition where existing lines are rendering adequate service, and the position is not changed by the fact that the proposed line in question asks to render a through service where not such service may be availed of only by using a succession of established carriers.

In this, as in other cases, competition, not demanded to serve a public necessity, will tend to the demoralization and perhaps destruction of the facilities now enjoyed, and thus, in the end, work to the disadvantage and not the convenience of the public.

Inasmuch, therefore, as this petitioner would be entirely within

his rights to carry packages and freight without our certificates, and there is no need of an added line for transportation of passengers, this application should be denied.

It has been thought proper to dispose of this matter on the merits. The certificate of this Commission could not, in any event, issue under present conditions as it appears that no consent has been given to the operation of this line by the village of Lake George, although that municipality has brought itself within the provisions of § 26 of the Transportation Corporations Law pursuant to chapter 307 of the Laws of 1919. The foregoing disposition of the case renders application to the authorities of that village unnecessary.

Chairman Hill and Commissioners Irvine and Van Namee concur; Commissioner Barhite not present.

Note.—A certificate to operate an auto stage service will not be granted merely for the purpose of affording a through service between the designated points, where existing lines render adequate service between intermediate points, and complaint to the Commission that a through route and joint rate is necessary, will receive investigation, and an order of the Commission will issue based on the testimony adduced upon such investigation. Re Wilson & Co. (Cal.) P.U.R. 1920C, 635.

Certificates of public convenience and necessity were granted to two auto bus lines to operate over the same route, where it appeared that there was no reason for prefering one applicant to the other, although there was not enough business to support both lines and it would become a case of the "survival of the fittest." Re Mona Bus Co. (Cal.) P.U.R.1921C, 485, April 16, 1921.

An auto stage operator who has secured operative rights through purchase from a corporation which was conducting a through route business in good faith prior to May 1, 1917, acquires no right thereby to operate a local service between intermediate points. Rhyne & Rhyne v. W. D. Greer Stage Co. (Cal.) P.U.R.1922B, 492.

The Commission found that the predecessor in interest of the present applicant had not operated a local service but in fact had consistently refused to accept passengers for transportation between local points and that such method of operation was continued during all the time that it operated the stage service over this route, thereby failing to acquire any right to operate locally.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

CLAUDE L. SCOTT
v.
GEORGE E. LATHAM.

[Case No. 8023.]

Monopoly and competition — Auto bus line.

1. Competition between bus lines should be prohibited the same as competition between common carriers.

Monopoly and competition — Auto bus line — Time schedule.

2. An auto bus line competing with a previously established line, was ordered to operate on a schedule which would not interfere with the business of its competitor.

[April 12, 1921.]

COMPLAINT of unfair competition by auto bus line; respondent ordered to desist from unfair competition.

Appearances: Willys A. Dunham, Corinth, New York, and John A. Slade, of counsel, Saratoga Springs, New York, for the complainant; Hall & Lannon, Saratoga Springs, New York, for the respondent.

Kellogg, Commissioner: This is a controversy between operators of rival auto bus lines, between the city of Saratoga Springs and the village of Corinth, both of whom have received certificates of convenience and necessity from this Commission.

In Case No. 7301, this Commission issued, April 8, 1920, a certificate of convenience and necessity, to Claude L. Scott, the petitioner here. It permitted him to operate a line between Saratoga Springs and the village of Corinth, 15 miles northerly.

The incorporated village of Corinth contains two postoffices, known respectively as "Corinth" and "Palmer," which form separate civic centers under the same municipal government, about a mile apart. A state route has been operated over this line for about six years, and Mr. Scott was the successor in interest to the owners of these lines. When in the spring of 1920 he succeeded to the sole ownership of the line, the common council of Saratoga Springs, instead of approving the assignment to him of the certificate and right to operate the bus line, preferred to issue an original certificate. He thereafter came be-

fore this Commission for its certificate, which was granted to him without opposition.

At about the same time the respondent Latham was applying to the municipality and to this Commission for the necessary certificates to operate another bus line from Saratoga Springs through Corinth to Hadley and Luzerne, municipalities 5 miles further north than Corinth. He also applied for a certificate to operate still further to Lake George.

The certificate was issued granting him permission to operate as far as Luzerne. In order to operate through to Luzerne he necessarily passed through Corinth, at least that portion of it which may be designated as Corinth proper. The portion known as Palmer to the east can be reached from the direct route between Saratoga Springs and Luzerne only by a detour to the east about a mile in length, adding 2 miles to the through trip.

A serious question arose on the application of Latham as to whether, in view of the fact that the operation to Luzerne would necessarily operate through Corinth, thereby competing with Scott, he should be granted any certificate at all.

[1] It is the policy of this Commission to prohibit competition in bus lines, as it is its practice to prevent other competition among common carriers. It is the theory of the law, which this Commission supports, that one carrier only should operate, subject to regulation as to all matters, and that thereby the best interests of the public are served.

The principle is well stated in Re Buschini, 7 N. Y. P. S. C. (2d Dist.) 299, 301, where, in announcing the principle that competition should not be permitted in such cases, the Chairman of this Commission wrote as follows: "The danger is that the business being divided between two carriers will be profitable to neither, and that in the long run the equipment of both will wear out in unprofitable service and neither will be able to continue. The result would be that the public would not be able to get any permanent service whatever."

He thereupon, as he states *"in view of the invariably disastrous results of cutthroat competition in public service,"* denied the application of the proposed competing carrier.

In the opinion herein in the application of the respondent,

Re Latham (Case No. 7406, decided May 11, 1920), this question of the probable results of the competition was discussed in the following language:

"The question remains whether the operation between these municipalities, competing with the Scott line between Saratoga Springs and Corinth, would be such as seriously to affect the latter, and, therefore, against the policy of this Commission in permitting ruinous competition in these enterprises.

"Corinth has a population, according to the last census, of 2,661 inhabitants. It is at the present time still growing, many new enterprises being under way.

"Both the Scott bus line and the bus line of this petitioner were actually placed in operation this year, although neither of them had a proper certificate from this Commission, so that actual experience of their operations could be and was put in evidence at the hearing. It was shown that notwithstanding the operation of the Latham bus line, there is no indication that the revenues of the Scott line are materially, if at all, depleted, and in fact its busses even with this competition are running on many of its trips to their full capacity.

"The conclusion is, therefore, that the competition between Saratoga Springs and Corinth will not be sufficiently injurious to the existing line to authorize the denial of this petition, thereby prohibiting the operation of this line so sorely needed by the population of a very substantial area farther to the north."

The expectation that the competition would prove inconsequential seems to have been sorely disappointed. The experience of the spring of 1920, upon which that conclusion was based, did not hold good during the periods of less frequent travel of the following winter season.

The receipts from the Scott line have been materially impaired by the operations of the Latham bus line, which has diverted a substantial amount of travel. This diversion is largely due to the methods of Latham in his operations, principally cn account of his timetable, and it is claimed also by reason of his method of imitating the advertising matter, the position of lights, tone of horn, etc., of the Scott bus line.

Without considering the minor matters, his time of departure from the different points on the route tends very materially to

withdraw patronage from the petitioner. For two of his runs, his hours of departure are advertised to leave at times shortly in advance of the Scott schedule, which has been maintained by Scott and his predecessors for three years at least.

The advertised time of his morning trip south is thirty-five minutes in advance of the Scott line, and his mid-day trip south is fifteen minutes in advance thereof. He is frequently late in these operations so that as a matter of fact his trip is often made directly ahead of the Scott line. Consequently, people at the various points on the road desiring to reach their destinations, and naturally taking the first conveyance appearing for that purpose, patronize the Latham line.

[2] This method of conducting the business is, of course, unseemly and unnecessary. It is in opposition to the public interests which would be much better served if the busses arrived at distinctly different times, and thus accommodate parties desiring to make the trip at various hours of the day.

One of the reasons for granting the certificate to Latham, as shown by the opinion, was the fact that on the Adirondack branch of the Delaware & Hudson Company's Railroad, which connects Luzerne and Hadley with Corinth and Saratoga Springs, and other points to the south, there was at that time in operation only one train daily each way per day, so that none of the people could leave their homes and transact business at any point to the south and return home the same day by railroad or other public carrier.

This condition has since been remedied inasmuch as by order of this Commission in Case No. 7796 another train has been placed upon this line daily each day, which in the morning runs southerly very closely upon the time of the trip of the Latham bus line from Luzerne, and returns in the late afternoon.

It is not improbable that after a consideration of these facts which have now been developed, regarding the added train and the studied competition with the Scott line by Latham, that a rehearing as to the Latham application might be granted, on petition, as provided by § 22 of the Public Service Commissions Law, and thereupon in consideration of the facts which have developed since the making of the order, it might under the provisions of said section be abrogated or changed.

However this may be, and it is not attempted to pass upon the merits of that matter here, the demand of the petitioner here does not go so far. He merely requests that Latham keep away a reasonable distance from his operating time, so that he will not be compelled to change a schedule which he and his predecessors in title have maintained for so long a period.

This request is entirely proper and the Commission should assist the petitioner by appropriate order directing the compliance with this his reasonable demand. If Latham were not permitted to take any passengers from the points on his route at any time within forty-five minutes prior to or within fifteen minutes after the present advertised time of departure of the Scott busses, the parties would be amply protected in their respective rights.

It has been suggested that the early trip of Latham southerly from Luzerne should be made at its present time, in order to accommodate his patrons, and that if he were compelled to wait at Corinth until after the Scott bus had left, there would be an unnecessary delay. He can, however, transport passengers, if he desired, from Luzerne to Corinth at any convenient time, and if, in order to comply with the requirements of the suggested order, through passengers to Saratoga were compelled to stop over at Corinth, in order to pursue the journey with Latham, longer than they desired, they could be relieved of that delay by either taking the Scott line south from Corinth, or taking the train all the way through from Luzerne to Saratoga.

In any event, the competition which the petitioner has experienced by reason of the granting of the certificate to Latham is directly contrary to the theory of the law, as of late uniformly interpreted by this Commission, and if Latham cannot profitably conduct his operations along this line without this unreasonable and disastrous competition with Scott, it would be better all things considered, and fairer to the previously established carrier and the public, whose ultimate interests cannot be served "by cutthroat competition in public service" that Latham cease operations altogether.

All concur.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

SCRANTON RAILWAY COMPANY

v.

M. J. WALSH.

[Complaint Docket No. 441, 1915.]

Public utilities — Automobiles operated over fixed routes for carrying passengers — Pennsylvania statute.

1. An individual operating automobiles over a fixed route for the conveyance of passengers at a uniform fare is a common carrier, and therefore is a "public service company" within the provisions of a statute conferring jurisdiction upon the Commission, and declaring that "the term 'public service company' . . . includes all railroad corporations, canal corporations, street railway corporations, stage-line corporations, express corporations, baggage-transfer corporations, pipe-line corporations, ferry corporations, common carriers . . . also all persons engaged for profit in the same kind of business;" that the term "person" means all individuals, partnerships, etc.; and that the term "'common carrier' . . . includes any and all common carriers, whether corporations or persons, engaged for profit in the conveyance of passengers or property," since the term "common carrier" is used in its broad sense as comprehending all that come under the common-law definition, and is not restricted to only such carriers as are named in the statute.

Note.—Oregon.

In Thielke v. Albee, — Or. —, 153 Pac. 793, it was held that a city had power to enact an emergency ordinance without referendum, under § 1, art. 4, of the Oregon Constitution (1906), which provides that the referendum may be ordered except as to laws necessary for the immediate preservation of the public peace, health, or safety, and such power is not abrogated by § 1 (a) thereof, which reserves to voters of every municipality the power of referendum upon all municipal legislation, especially in view of the fact that for years the legislature and cities had so construed the Constitution. (P.U.R. 1916D, 6.)

An ordinance which requires the operator of a motor bus upon a public highway to secure a certificate from the commissioner of public utilities before applying for a municipal license is not invalid as vesting such commissioner with an arbitrary power, where the act provides for an appeal. Ibid.

Automobiles — Common carriers — Necessity for certificate of convenience — Automobile license.

2. An individual cannot lawfully operate automobiles as a common carrier upon the public highways without the approval of the Pennsylvania Commission, by virtue of automobile licenses granted to him by the state under a police law having reference to the use of public highways by all motor vehicles, where the Public Service Company law requires a certificate of public convenience before engaging in any public service business.

[March 15, 1916.]

COMPLAINT that M. J. Walsh was carrying on business of conveying passengers for hire by automobiles without a certificate of public convenience and requesting an order directing him to discontinue the service; order directing respondent to cease carrying on the business until he shall have obtained a certificate of public convenience.

Appearances: H. B. Gill for the Scranton Railway Company; W. J. Moxey for M. J. Walsh.

Monaghan, Commissioner: On September 6, 1915, the Scranton Railway Company filed its complaint against M. J. Walsh, and prayed for an order under the provisions of § 27 of article 5, and other provisions of the Public Service Company law, requiring and directing the respondent to discontinue the service of the transportation and carriage of passengers for hire between Carbondale and Forest City by motor-driven vehicles. The service is popularly known as "jitney" service, and the respondent has not applied for nor received a certificate of public convenience from this Commission, nor has he filed any schedule of rates and charges.

The Scranton Railway Company is a corporation owning and operating as one of its lines for the past ten years an electric railway for the carriage of passengers for hire between Carbondale and Forest City, in this state.

[1] Michael J. Walsh, the respondent, resides in Forest City, and is engaged in the insurance business. He also conducts, at that place, an automobile livery, and is the owner of three automobiles for which he has obtained licenses from the state highway department. These automobiles are operated by himself and his two sons, and are hired by him to persons who may desire to be transported to any destination. However, in addition to this ir-

regular or occasional service, the respondent and his sons have, since May 3, 1915, operated these automobiles, or some of them, over a certain regular and fixed or definite route along the county road (a public highway paralleling the line of petitioner's railway), between the city hall in Carbondale and a certain terminus in Forest City, a distance of approximately 9 miles. During the greater portion of this period they have been making from five to sixteen round trips daily, transporting any person who desired to ride in the automobiles from and to any place along the route, upon the charge of 15 cents for the through ride between Forest City and Carbondale being paid the chauffeur, or for a fare of 5 cents or 10 cents to the intermediate points of Vandling or Simpson. Any passenger entering the vehicles who might desire to be transported to a place off the regular route would be carried to the terminus, and thence to his destination upon payment of extra compensation. The automobiles when in service on the regular route bore the sign, "Automobile Passenger Service," and started on the first trip between 8 and 10 o'clock A. M., and on the last trip at 10:30 P. M.

Is the respondent a public service company within the provisions of the act of July 26, 1913?

Section 1, article 1 of the act provides: "The term 'public service company' when used in this act includes all railroad corporations, canal corporations, street railway corporations, stage line corporations, express corporations, baggage transfer corporations, pipe line corporations, ferry corporations, *common carriers . . . also all persons engaged for profit in the same kind of business* within this Commonwealth,— . . .

"The term *'person,'* as used in this act, *means all individuals, partnerships or associations, other than corporations.*"

The act further provides: "The term *'common carrier,'* as used in this act includes any and all common carriers whether corporations or persons engaged for profit in the conveyance of passengers or property or both, between points within this Commonwealth, by, through, over, above, or under land or water, or both." [Laws 1913, pp. 1375, 1376.]

It is argued that the term "common carrier" was intended to be used in a limited sense; but any doubt as to the meaning of

the term "common carrier" in the act is swept away by the very broad definition of that term contained in § 1. In defining "common carrier" the act says they shall include "any and all" common carriers; and the words of the statute as contained in this definition must be taken in their original and popular sense, unless when so construed some incongruity or manifest absurdity results. The expression "any and all" common carriers means no more nor less than their ordinary use and signification indicates, *i. e.*, all common carriers, and not less than all, if the ordinary meaning of very common words and language is to be given them.

In Pittsburgh, C. C. & St. L. R. Co. v. Lightheiser, 163 Ind. 259, 71 N. E. 218, the supreme court of Indiana, in construing the word "all" as contained in one of the statutes of that state, said: "As so used it is a general term which is to be understood as comprehending whatever is within the utmost circle of the meaning of the word, unless after subjecting the statute to interpretation and construction, there is sufficient reason for holding that the term was not used in so broad a sense. . . . As indicated, there must be a reason which warrants the court in concluding that the word was not used according to its primary meaning to justify a holding that it was used in a more restricted way, for courts cannot create exceptions in the operation of statutes, but at the most can only recognize such exceptions as the legislature has created."

It is contended by the respondent in the present case that the term "common carrier" as used in the first section of the act, having been preceded and followed by certain named common carriers, restricts the general term to only such carriers as are named; but this contention is without any weight when it is noted that among the specially named corporations over which jurisdiction is given are several that are not common carriers at all; in addition to which, should we confine our jurisdiction to the corporations specified by name, we would be obliged to wholly ignore the general term "any and all common carriers" specifically set forth in the definition of common carriers contained in § 1. Under such a construction the use of the term "any and all common carriers" in that definition would be senseless and unnecessary. The deliberate use of this expression, "any and all

common carriers," in the definition, we cannot regard as having been accidental, careless, or without purpose, and therefore we accept the common, ordinary, and popular use of the words, "any and all," in their relation to common carriers.

Anyone who holds himself out to the public as ready to undertake for hire or reward the transportation of goods from place to place, and so invites the custom of the public, is in the estimation of the law a common carrier. Lloyd v. Haugh & K. Storage & Transfer Co. 223 Pa. 148, 21 L.R.A.(N.S.) 188, 72 Atl. 516.

A common carrier of passengers has been defined to be one who undertakes for hire to carry all persons, indifferently, who may apply for passage (6 Cyc. 534); and "such as undertake for hire to carry all persons indifferently who may apply for passage, so long as there is room and there is no legal excuse for refusing" (Bouvier's Law Dict.).

A careful review of the facts in this case leads us to the inevitable conclusion that the respondent is a common carrier of passengers under the accepted legal definition of that term at common law, and also under § 1 of the act specifically defining the term "common carrier" as including all common carriers of passengers as well as of goods or property.

The construction herein placed upon the term "any and all" common carriers as used in § 1 of the act is supported by the decisions of the Commissions of other states.

In Georgia R. & P. Co. v. Jitney Bus Co. decided by the Railroad Commission of Georgia on June 8, 1915 (P.U.R. 1915C, 928), it appeared that a statute conferred jurisdiction upon the Railroad Commission, and used the words, "all common carriers," without any limitation whatever. That Commission held that it had power and jurisdiction under that language over "jitney" buses and motor trucks carrying persons or property for compensation.

Our authority, of course, must be derived from some language contained in the act; otherwise we would be without the necessary jurisdiction.

See Western Asso. v. Hackett, P.U.R.1915F, 997, at p. 1010.

But the language conferring jurisdiction upon the Commission in Pennsylvania is so clearly explicit and unambiguous as to

leave no doubt of our jurisdiction over common carriers of the class represented by the respondent.

The business conducted by the respondent is rendered in common to all the public, and available to all. He is engaged in the same business of transportation of passengers alongside and in direct competition with the trolley car for a considerable volume of traffic, and it is not apparent that there is less need of regulation for him than there is for the electric car. The respondent operates his cars on a regular, fixed route, between certain definite termini, charging all persons a uniform fare, and is thus clearly engaged in public service business and in competition with the electric car running parallel with his route.

[2] We have therefore come to the conclusion that the respondent is a public service company, and is entitled to all the rights and liable to all its duties imposed by the Public Service Company law. The respondent, being a public service company, may not lawfully begin business without the approval of this Commission. Article 3, § 2, of the act provides: "Upon the approval of the Commission, evidenced by its certificate of public convenience, first had and obtained, and not otherwise, it shall be lawful for any proposed public service company—(a) To be incorporated, organized or created: Provided, That existing laws relative to the incorporation, organization, and creation of such companies shall first have been complied with, prior to the application . . . for its certificate of public convenience. (b) To begin the exercise of any right, power, franchise, or privilege under any ordinance, municipal contract, or otherwise."

The meaning of clause "b" was the subject of consideration by this Commission in the case of Pennsylvania Utilities Co. v. Lehigh Nav. Electric Co. (Complaint Docket No. 200.) In that case the Commission said: "Under § 1 of article 1 of the act, public service companies consist of two classes, *i. e.*, corporations, and all persons engaged for profit in the same kind of business. . . . Individuals when intending to engage in business as public service companies are 'proposed' public service companies. The Commission has the . . . power under clause 'b' to determine whether an individual shall be permitted to embark in public service business."

Under the sections of the act to which we have just adverted,

the exercise of the right to carry on public service business on the public highway cannot be begun lawfully without the approval of this Commission evidenced by its certificate of public convenience first had and obtained.

The general purpose of the act is the regulation of all public service companies, individuals as well as corporations. Such regulation under the provisions of the act extends to the determination of whether it is necessary or proper for the service, accommodation, convenience, or safety of the public that the service shall be rendered. Art. 5, § 18.

As we interpret the act, no proposed corporation intending to embark in public service business, and no individual, partnership, or unincorporated association of individuals intending to embark in public service business, may do so, unless it or he has first obtained the approval of this Commission evidenced by a certificate of public convenience.

The respondent claims the right to engage in public service business by virtue of automobile licenses granted to him by the proper authorities of the commonwealth; but the act of July 7, 1913, under which he claims this right, does not pretend to regulate business; it is a police law with reference to the use of public highways by all motor vehicles, whether run in private use or as public carriers for hire or reward or for pleasure. We are therefore quite clear that while an applicant intending to operate a motor vehicle must first obtain a license from the commonwealth to operate his vehicle, yet having obtained such license, and before he can embark in the business of a public service company, he must apply for and obtain the consent of this Commission.

From the evidence in this case the Commission finds that the respondent owns, controls, manages, and operates within this state for public use a number of automobiles which he is using for the transportation of persons for hire between points within this state, and that in the conduct of such business the respondent is a common carrier of passengers, and therefore a public service company within the meaning of the act of July 26, 1913, and subject to the provisions of said act.

The Commission further finds that the respondent was not engaged in such business, nor engaged in any public service of that character within this state prior to the 3d day of May, 1915;

but that on the said 3d day of May, 1915, and subsequently thereto, the said respondent did own, run, operate, manage, and control certain automobiles in the furnishing of certain service to the public commonly or popularly known as "jitney" service; that is to say, the carrying of any and all persons, indifferently, for hire or reward, at a fixed rate and over a fixed and definite route along a certain public highway between points in this state, unlawfully, without having applied for or obtained from this Commission a certificate of public convenience required for the transaction of such business under the provisions of the act of July 26, 1913.

An *order* will therefore be entered directing the respondent, Michael J. Walsh, to cease and desist from carrying on the aforesaid public service business until he shall have applied for and obtained from this Commission a certificate of public convenience in approval thereof, under and in accordance with the provisions of the Public Service Company law approved the 26th day of July, 1913.

Note.—Upon authority of SCRANTON R. Co. v. WALSH, above reported, similar orders were made in the following cases involving similar facts: Scranton R. Co. v. Owens, Complaint Docket 442, and Scranton R. Co. v. Wilson, Complaint Docket 443.

As to state and municipal regulation of jitneys operated as common carriers, see note attached to Re Woodlawn Improv. Asso. Transp. Corp. ante, 1.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

ALLEGHENY VALLEY STREET RAILWAY COMPANY

v.

PETER GRECO.

[Two Cases: Complaint Docket No. 641; Application Docket No. 416-1916.]

Monopoly and competition — Occupied field — Street railway — Other forms of passenger transportation.

1. That the existing street railway will suffer serious loss through the admission of competition is not a sufficient reason to warrant the refusal of a certificate of public convenience for the operation of a better and more convenient form of transportation than that furnished by the street railway.

Monopoly and competition — Occupied field — Street railways — Automobiles.

2. The Pennsylvania Commission refused to issue a certificate of public convenience for the operation of ordinary small-sized automobiles in competition with a street railway, where the competition would seriously interfere with the revenues of the street railway, upon the ground that such vehicles cannot meet the public demand for transportation in all kinds of weather on a sufficiently safe and stable basis to warrant accepting them as satisfactory substitutes for street car service.

Commissions — Jurisdiction — Questions — Constitutionality of organic act.

3. The Pennsylvania Commission will not pass upon questions involving the constitutionality of the act conferring jurisdiction upon the Commission.

Public utilities — Automobiles operated for carriage of passengers — Pennsylvania statute.

4. Individuals operating automobiles for the transportation of the public for hire along fixed routes, or wherever passengers desire to go, are common carriers and public service companies within the meaning of the Pennsylvania Public Service Company Law requiring all public service companies to secure a certificate of public convenience from the Commission before engaging in business.

[November 15, 1916.]

COMPLAINT by street railway that Peter Greco was operating automobiles as a common carrier without a certificate of convenience, and APPLICATION by Peter Greco for a certificate of public convenience to operate automobiles in competition with the street railway; order directing defendant to cease the operation of automobiles as a common carrier and denying the application for a certificate of public convenience.

Ainey, Chairman: The Allegheny Valley Street Railway Company filed a petition (C. 641) complaining that Peter Greco was operating an automobile as a common carrier of passengers without having obtained from the Commission the prerequisite certificate of public convenience authorizing him to engage in such business. To this the respondent made answer, admitting all the material allegations of the complaint, but denying the applicability of the Public Service Company Law and the authority of the Commission to take cognizance of the matters complained of. Later, the respondent presented to the Commission an application (A. 416–1916) for a certificate of public convenience, authorizing him to operate a five-passenger automobile as a com-

mon carrier over substantially the same route set forth in the complaint. The street railway company filed a protest in which it was set forth that the public was adequately served by protestant, whose tracks were laid and service rendered along the same highway over which the respondent and applicant was engaged in automobile carrier service.

The complaint and application were heard together. At the hearing there was little conflict of testimony, and the facts adduced are within narrow compass.

[1, 2] It appears that coincident with a strike which occurred among the employees of the Allegheny Valley Street Railway Company in August, 1915, a large number of owners of automobiles of small seating capacity, many of them former employees of the street railway company, began operating these automobiles for the carriage of passengers along the route and between the places served by the street railway company's cars. None of the automobile carriers had obtained from the Public Service Commission certificates of public convenience authorizing them to engage in this service. All of those automobile operators, including the respondent, Peter Greco, traversed substantially the same route, charging definite rates of fare varying from 5 to 15 cents. . It appears that he and other respondents at times vary their routes in order to accommodate their passengers, and some of them advertise to carry passengers "anywhere." They maintain a public waiting room, which is in effect a terminal station, and hold themselves out to the public as common carriers of passengers in the territory and along the routes traveled by them. It is clearly apparent from the evidence that their automobiles were frequently and dangerously overloaded; sometimes as many as sixteen passengers were permitted to ride in automobiles with seating capacity for only four or five persons. Passengers were at times seated on the doors or mud guard of the cars, or permitted to stand on the running board, and others were crowded within the automobile. Not infrequently several passengers were permitted to be crowded beside the driver in the space calculated for but one passenger. The petitions of this and other applicants allege that 95 per cent of the traveling public has, since the strike, been diverted from the street cars of complainant to the automobile line of this and

the other respondents. From the testimony it appears that the gross earnings of the railway company for the year 1914 were $192,766.81; the operating expenses for the same period of time $118,411.90, which after deducting interest on bonds and other obligations left a deficit of $15,784.32. For the year 1915, the last four months of which the automobile service complained against was being rendered, the gross receipts shrank to $137,-468.67; the operating expenses for the same period were $130,-884.66, leaving the net earnings $6,584.01, and the net deficit for the year $83,157.74, a net loss in 1915, as compared with 1914, of $67,373.42, which under the testimony of the respondents as well as complainants largely occurred from loss of revenue by reason of the automobile service between August 20, 1915, and January 1, 1916.

Thus is presented a situation of grave moment and one which concerns the public, whose rights, necessities, convenience, and safety are of primary consideration before this Commission. It is apparent that the automobile service in which this and the other respondents are now engaged, and the service provided by the street railway company, cannot both continue; that neither the Commission nor the public can expect that the railway company will be able adequately to operate its railway at all seasons of the year, with convenient car schedule, and with comfortable and safe cars, if its income is to be so seriously depleted. On the other hand, the losses which this or other railway companies may sustain cannot be weighed against the convenience of the public if at any time a better or more convenient form of transportation than that furnished by the street railway companies is offered. There are now constructed and in operation automobiles adapted to public service, which are both safe and convenient; but we are not convinced that automobiles of small size, many of them secondhand (the operators of which are neither prepared nor willing to render service in all kinds of weather and at all seasons of the year), can in all cases meet the public demand for transportation on a sufficiently safe, permanent, and stable basis so as to warrant the Commission in accepting them as satisfactory substitutes for street car service.

The Allegheny Valley Street Railway Company maintains a thirty-minute schedule at all periods of the day. During the

morning and evening hours, when the travel is heavier, this is increased to a fifteen-minute schedule. So far as the evidence disclosed, this is adequate, but if at any time it appears to be insufficient, it is within the power of the Public Service Commission to order increased facilities whenever the necessity therefor is brought to its attention.

[3, 4] First, as to the complaint and answer. The principal objections raised by the answer against the complaint are:

(a) That the respondent is not a common carrier of passengers, nor a public service company, within the meaning of the Act of July 26, 1913.

(b) That he is not subject to the provisions of said act.

(c) That if the said respondent is a common carrier, the Act of July 26, 1913, does not apply to him; and if it does so apply, it is unconstitutional in failing to give notice of said matter in its title.

Second, as to the application and protest:

(a) The protest sets forth that the charter or franchise right which protestant enjoys would be invaded if this application were granted.

(b) That the certificate of public convenience applied for is not necessary or proper for the service, accommodation, convenience, or safety of the public.

Thus, there is raised the question as to whether owners of automobiles holding themselves out as undertaking for hire to carry all persons indifferently are common carriers of passengers, and whether as such common carriers they are subject to the Public Service Company Law. For reasons which it has frequently set forth, this Commission declines to pass upon questions involving the constitutionality of its organic act. Whether a person is engaged in the business of a common carrier is a question of fact, dependent not upon the means employed for the carriage, fixed termini, nor definite route. These are but limitations which the carrier imposes on himself, beyond which he may not be compelled to go in the performance of the public service which he purposes to render.

Under well-recognized authority the test is, "one who undertakes for hire to carry all persons indifferently who apply for passage." In Nicolette Lumber Co. v. People's Coal Co. 26

Pa. Super. Ct. 575, a common carrier of goods was defined to be "one whose business it is to carry chattels for all persons who may choose to employ and remunerate him, and this applies to carriers by land and water without regard to distance or motive power." "One may be a common carrier who has no fixed termini but leaves the course of transportation in each case to depend upon his customer's wish." 1 Moore, Carr. 2d ed. 73. In Pennewill v. Cullen, 5 Harr. (Del.) 241 it was held that it was not necessary that his trips should be regular between the same points or places. The English courts have reached the same conclusion. In Liver Alkali Co. v. Johnson, L. R. 7 Exch. 267, it was held that a barge owner who did not ply between any fixed termini, but the customer fixing in each particular case the points of arrival and departure, was engaged in common carriage. Judge Story in his work on Bailments, § 496, says: "What substantial distinction is there in the case of parties who ply for hire in the carriage of goods for all persons indifferently, whether the goods are carried from one town to another or from one place to another in the same town? . . . Is there any substantial difference whether the parties have fixed termini of their business or not, if they held themselves out as ready and willing to carry goods for any persons whatsoever to or from any places in the same town, or in different towns?" 1 Hutchinson, Carr. 3d ed. 67. In the text of the last authority (page 59), it is stated: "It is not necessary where the other elements exist, that the carrier should make regular trips or travel only between fixed termini."

Whether a person is a common carrier depends upon whether he holds himself out to the world as such, and he can hold himself out as a common carrier by engaging in the business generally, or by announcing or proclaiming it by cards, advertisements, or by any other means that would let the public know that he intends to be a common carrier for the public. 1 Wyman, Public Service Corp. § 205; Schloss v. Wood, 11 Colo. 287, 17 Pac. 910. So, one gesticulating to incoming passengers. Atlantic City v. Fanslar, 70 N. J. L. 491, 57 Atl. 1133. And one who takes his stand in a public square. Gordon v. Hutchinson, 1 Watts & S. 285, 37 Am. Dec. 464. The word "jitney," though of recent origin, has come to have a well-recognized sig-

nificance, and is indicative of the right of persons desiring passage to hail and enter automobiles or auto buses so labeled.

Anyone who holds himself out to the public as ready to undertake for hire or reward the transportation of goods from place to place, and so invites the custom of the public, is, in the estimation of the law, a common carrier, was the utterance of the supreme court of Pennsylvania in Lloyd v. Haugh & K. Storage & Transfer Co. 223 Pa. 148, 21 L.R.A.(N.S.) 188, 72 Atl. 516, a case where there were no fixed termini.

In the Supreme Court of the United States in Terminal Taxicab Co. v. Kutz, 241 U. S. 252, 60 L. ed. 984, 36 Sup. Ct. Rep. 583, Ann. Cas. 1916D, 765, Justice Holmes stated: The important thing is what it does, not what its charter says. Its business consisted in part in soliciting business at the Union Railroad Station in Washington. "It may be assumed," said he, "that a person taking a taxicab at the station would control the whole vehicle as to contents, direction, and time of use, although not, so far as indicated, in such a sense as to make the driver of the machine his servant according to familiar distinctions." Another item of the plaintiff's business consisted in furnishing, under contracts with certain hotels, taxicabs, and automobiles, receiving the exclusive right to solicit in and about the hotels, but limiting its service to the guests of the same. "We do not perceive that this limitation removes the public character of the service or takes it out of the definition in the act. No carrier serves all the public. His customers are limited by place, requirements, ability to pay, and other facts. But the public generally is free to go to hotels if it can afford to, as it is free to travel by rail, and through the hotel door to call on the plaintiff for a taxicab. We should hesitate to believe that either its contract or its public duty allowed it arbitrarily to refuse to carry a guest upon demand. . . . The service affects so considerable a fraction of the public that it is public in the same sense in which any other may be called so. . . . The public does not mean everybody all the time." As to these two kinds of service it was held, under the opinion above mentioned, that the plaintiff was a common carrier, subject to the jurisdiction of the Public Utilities Commission.

In view of these apposite though trite definitions, it is hardly

conceivable that any serious questions can exist in the mind of anyone as to the status of the ordinary "jitney" or auto bus service. In every particular such form of public transportation answers to the test of common carriage.

Still another question has been presented: Are automobiles so operated for public use and hire, public utilities within the meaning of the Public Service Company Law?

Again referring to the Terminal Taxicab Case, supra, Justice Holmes pointed out that the powers of the Public Utilities Commission of the District of Columbia were prescribed by the Act of March 4, 1913 (37 Stat. at L. 938–974, chap. 150), under which "every public utility is hereby required to obey the lawful orders of the Commission," and "public utility" embraces every common carrier, which phrase in turn is declared to include . . . every corporation controlling or managing any agency or agencies, for the public use, for the conveyance of persons or property within the District of Columbia for hire. The taxicab company denied that it was under the jurisdiction of the Commission.

In the light of this decision it may be well to point out the similarity of the Public Service Company Law of Pennsylvania to the one under which the above-mentioned decision was rendered.

The Pennsylvania law defines: The term "public service company" includes all "stage-line corporations" and "common carriers . . . doing business within this state," and "also all persons engaged for profit in the same kind of business within this commonwealth."

"The term 'common carrier' as used in this act includes any and all common carriers, whether corporations or persons, engaged for profit in the conveyance of passengers or property, or both, between points within this commonwealth, by, through, over, above, or under land or water, or both."

The term "conveyance of passengers" includes any and all service in connection with transportation or carrying of passengers.

"The term 'service' is used in this act in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and all

and every the facilities used or furnished or supplied by public service companies in the performance of their duties to their patrons, employees, and the public. . . ." [Laws 1913, p. 1376.]

Under this law all public service companies about to engage in business must secure from the Public Service Commission of the commonwealth of Pennsylvania a certificate of public convenience in each and every case, and (it) "shall be given only if and when the said Commission shall find or determine that the granting or approval of such application is necessary or proper for the service, accommodation, convenience, or safety of the public." [Laws 1913, p. 1415.]

The conclusion is irresistible that the professions and the conduct of the said respondent, and all the circumstances involved in the jitney business in which he is engaged, constitute him a common carrier of passengers, and bring him within the class of public service companies over which this Commission is bound to exercise its regulating authority thus imposed by statute.

Our duty is defined by the act, and we may not properly permit individuals to engage in public service unless the safety of the public is reasonably assured, and until we have determined that the proposed service is necessary or proper for the convenience, accommodation, or safety of the public.

The testimony offered falls far short of convincing us that the service in which this applicant and the respondent is engaged is necessary or proper for the safety, accommodation, or convenience of the public. Even though we were convinced, as we are not, that the street railway is not furnishing adequate service, and that automobile transportation is necessary for the convenience of the public, this applicant has failed to show that the five-passenger automobile is of sufficient size or of proper form of construction to meet any public demand for transportation convenience. If there be any necessity whatever in this locality, it is surely one requiring a larger automobile and better arrangements for public service than the one he offers.

It is the duty of all public carriers, whether carriers of goods or passengers, or both, to provide themselves with suitable and sufficient means to carry according to their profession; their obligation is absolute. 2 Hutchinson, Carr., 3d ed. 1008.

If at any later period it shall appear that automobile service is

needed for the transportation of passengers along the route proposed, and an application is submitted by one prepared to permanently render the service needed, a certificate of public convenience will unhesitatingly be granted; but such a state of facts has not presently been presented, nor has there come before us one properly equipped to render such service.

This and the allied cases must be disposed of on the broad ground of public necessity. Under the law applications for certificate of public convenience may be approved by the Commission, but in each and every case such approval "shall be given only if and when the said Commission shall find or determine that the granting or approval of such application is necessary or proper for the service, accommodation, convenience, or safety of the public." Viewed in the light of this statutory standard and requirement, the Commission is of the opinion that the applicant has not established his right to such certificate, nor that the service which he proposes to render is necessary or proper for the service, accommodation, convenience, or safety of the public.

Under all the evidence in the case, the Commission finds and determines that the respondent, Peter Greco, is operating his automobile for the common carriage of passengers without having first obtained from the Commission a certificate of public convenience, and is therefore engaged in said business in violation of the Public Service Company Law, and that the granting of a certificate of public convenience to him on his application pending before the Commission should be refused.

Orders will therefore be issued (a) requiring him to cease and desist from further carrying on said business as a common carrier; (b) refusing approval of his application for a certificate of public convenience.

Note.—In Southern Pennsylvania Traction Co. v. Hartel, Feb. 26, 1917, P.U.R.1917C, 627, the Pennsylvania Commission held that the operation of an auto bus for hire parallel to an electric railway between municipalities should not be allowed merely because of inadequate railway service; since, if complaint were made against the service, the Commission could order it remedied.

Relying upon the decision in this case under a similar state of facts, in Southern Pennsylvania Traction Co. v. Pavillard, Complaint Docket No. 1152, Feb. 26, 1917; Southern Pennsylvania Traction Co. v. Powers, Complaint Docket No. 1154, Feb. 26, 1917; Southern Pennsylvania Traction Co. v. Hartel, Complaint Docket No. 1155, Feb. 26, 1917; Southern Pennsylvania Traction Co. v. Rich, Complaint Docket No. 1156, Feb. 26, 1917, and Re Griffith, Application Docket No. 741–1916, Feb. 26, 1917, automobile common carriers not having certificates of convenience and necessity were ordered to cease operation; and in Re Hartel, Application Docket No. 773–1916, Feb. 20, 1917; and in Re Griffith, Application Docket No. 741–1916, Feb. 26, 1917, application for certificates were refused.

A person operating a jitney bus in a city in Pennsylvania must secure a certificate of public convenience from the Commission, since the Pennsylvania statute (Act of June 1, 1915) authorizing cities to regulate and license certain motor vehicles did not repeal the Public Service Company Law declaring it unlawful for any public service company to exercise any municipal franchise or privilege without securing such a certificate. Wilkes-Barre R. Co. v. Parsons, Complaint Docket No. 556, Nov. 15, 1916. (P.U.R.1917E, 371.)

A certificate of convenience and necessity was refused by the Pennsylvania Commission in Re Houser, P.U.R.1922B, 383, on the ground that the large capital investment in street railway transportation should be protected from jitney competition.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

L. B. LANDIS and Joseph Martin Trading as Landis Taxi Service

v.

C. B. HENRY et al.

[Complaint Docket No. 2621.]

Automobiles — Certificate over designated route — Rights as to intermediate points.

The issuance of a certificate of public convenience for the operation of autobusses between two designated points over a named route includes the right to operate between intermediate points on the designated route, and the refusal to permit competitor to operate between the termini includes the denial of the right to operate between intermediate points.

[February 25, 1919.]

COMPLAINT that respondents were unlawfully operating over a route for which the complainant had received a certificate of public convenience; complaint sustained and respondent ordered to desist from so operating.

McClure, Commissioner: On January 14, 1918, a certificate of public convenience was issued to the complainants for the operation of a line of autos or autobusses between their office opposite the Pennsylvania Railroad Station at Cresson and the Cresson State Sanatorium, over a named route largely the William Penn Highway, and through the village of Summit (A. 1704–1917).

The respondents filed an application (A. 1908–1918) for the approval of the beginning of operation of autobusses over the same route and between the same points; also for approval of doing a general hack business in Cresson borough. On October 22, 1918, the first prayer was refused and a certificate was granted to operate on call or demand service between points within the borough of Cresson and between points within and points contiguous or nearby territory except between the Cresson passenger station and the Pennsylvania state sanatorium.

Notwithstanding the refusal of the Commission to grant the respondents the right to operate between the railroad station and the sanatorium and the limitations contained in their certificate, the evidence discloses many violations of the order. Some, no doubt, may have been due to their failure to grasp the scope of the order, but many were deliberate evasions of it. Prospective passengers were sent to points close by the station and were there picked up and carried through to the sanatorium; others were carried from the sanatorium to points adjacent to the station and there deposited. These were all wilful violations of the order. Passengers have also been carried between the station and the village of Summit over the Landis route, a privilege which was not granted the respondents, although they seem to have been under the impression that had not been denied them and that they were within their rights in carrying to intermediate points, but they were not. The Landis taxi service had been given the right to operate between the station and the sanatorium over a named route. This, of course, included all intermediate points.

The respondents were expressly denied the right to operate between the said termini, and it is clear that this denial also included all intermediate points.

The complaint is sustained. That there may be no possible misunderstanding in the future, the respondents will be ordered to desist from soliciting and carrying passengers from the Pennsylvania Railroad Station at Cresson or the vicinity thereof, to the Pennsylvania State Sanatorium or points adjacent thereto; or from the said sanatorium or the vicinity thereof to the said railroad station or points adjacent thereto; and, from soliciting or carrying passengers from either the railroad station or the vicinity thereof, or the state sanatorium or the vicinity thereof, to Summit or other points intermediate of the station and the sanatorium, or from Summit or other intermediate points to the station or the sanatorium or points adjacent thereto.

The Commission will not now enforce the penalty for violation of its order, as it might do under the circumstances disclosed in this case, but further evasions will subject the respondent to the penalty which the law imposes.

Note.—Municipal Ordinances.

A city may by ordinance establish routes for jitneys, under legislative authority to regulate motor vehicles and under the police power, although jitneys are excluded from three fourths of the streets, since unregulated routes are dangerous to passengers and pedestrians and obstruct traffic. Philadelphia Jitney Asso. v. Blankenburg (Pa. Dist. Ct.) No. 2382, Nov. 4, 1915. (P.U.R.1916D, 6.)

An ordinance requiring a jitney operator to obtain a license, to execute an indemnity bond, to cover a minimum distance over an entire route, and to charge a maximum rate of 5 cents, does not create a new remedy, or deprive the operator of property without due process of law, or conflict with a general act regulating automobiles. Ibid.

An ordinance regulating jitneys is not rendered discriminatory by the exclusion from its provisions of sight-seeing automobiles, taxicabs, automobiles hired from fixed stands in the streets, or from garages, and solely under the direction of the passenger, and omnibusses carrying not less than thirty nor more than forty passengers, jitneys not being prohibited from going into the exempted classes, and the ordinance applying equally to all jitneys. Ibid.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

HERBERT BARBER et al.

v.

JOHN M. DREW.

[Complaint Docket Nos. 3142, 3143.]

Return — Amount — Auto busses.

1. An increase in rate for a motor bus line will not be granted where the existing rates yield a return of 50 per cent on the capital actually invested, after setting aside 50 per cent for depreciation on the equipment and making very liberal allowances for general management.

Return — Basis — Auto busses.

2. The Pennsylvania Commission will not regulate small auto bus lines under the same standards of valuation and return that apply to utilities in which capital in large amount has been invested by incorporated companies.

[March 2, 1920.]

COMPLAINT against increase in auto bus rates; sustained.

By the **Commission**: In December, 1917, the Commission issued a certificate of public convenience to John M. Drew, which was extended in November, 1918, under which he has operated a line of motor busses in Delaware county from Darby, through the borough of Lansdowne, to the Sixty-ninth street terminal of the Philadelphia Rapid Transit Company's system in upper Darby township.

Two 5-cent fares have been charged on this bus line, one in a zone from Darby to Baltimore avenue, Lansdowne, a distance of about 1½ miles, and one in a zone from Baltimore avenue, Lansdowne, to the Sixty-ninth street terminal, a distance of about 2⅛ miles. The respondent has filed a tariff to charge 10 cents in the second zone, or sell three tickets for 25 cents, under which a zone fare ride between Sixty-ninth street terminal and Lansdowne would cost 8⅓ cents. Complainants allege that this charge would be unreasonable and unjustly discriminatory.

The respondent has had the benefits of an exclusive privilege to operate motor vehicles as common carriers in this particular territory since he was granted a certificate of public convenience.

Prior to that time, the borough of Lansdowne and surrounding district was overrun with irresponsible jitneys, whose operation was a source of public nuisance and danger. By common consent, the route over which the respondent operates is one of the best, and most promising from a standpoint of business development, in the state, and the franchise thus enjoyed, therefore, should warrant the best class of service at rates entirely reasonable to the riding public.

There is no complaint as to the service rendered by respondent, although testimony in the case indicates that the present equipment of three busses is at times inadequate for the peak load traffic, and may not suffice the ordinary public demand as the business develops. The entire question at issue is over the proposed increase in fare, and from the facts before the Commission, the increased rate cannot at this time be allowed as being just or reasonable.

[1] Examination of the books of the respondent, agreed to by respondent and complainants, and made by an auditor of the Commission, disclosed two pertinent conditions:

(1) That the respondent's system of bookkeeping has been such that it has apparently been difficult for him to accurately calculate his net revenues or profits.

(2) That the books and accounts would seem to show that respondent has made as much as 74 per cent profit on the capital actually invested, after the absorption of a very liberal amount of the gross revenues in salaries for general management.

After the auditor's examination of the books, respondent made claim to additional items of operating costs, wiping out the large margin of profit which the accounting report had shown. But there was only one item upon which there could reasonably be any wide divergence of opinion and conclusion—that of allowance for depreciation in his autobus equipment. Even if the auditor's calculation of 20 per cent depreciation per annum should be increased to 50 per cent, which would allow for complete replacement in two years, the respondent's profits above all expenses, management salaries, and other allowances have been 50 per cent.

[2] It is not to be presumed that the Commission will, or should, attempt to regulate small autobus or other vehicular con-

cerns under the same standards of valuation and rates of return that apply to utilities in which capital in large amount is invested by incorporated companies. Elements such as the employment of individual time and talents in the development of such businesses, and which deserve reward entirely apart from any measure of fixed return upon the meager amounts of capital invested, must be considered if these small and worthy enterprises are to be encouraged in giving the best possible public service. But it must also be considered, as in the respondent's case, that such utilities are given free, excepting only a few inconsequential local assessments or taxes, exclusive rights of way over streets and highways maintained at public expense, and all the benefits of police and other protection which the state and the local communities furnish.

In declining to permit the tariff of increased fares to go into effect at this time, the Commission does so with a view of permitting the respondent to renew application within a reasonable time in the future, if the necessity for business extension and development, or other causes, shall warrant. To do so, however, will require that the respondent shall so order his business accounts and management as shall make clear the claims upon which he may justify increase in the filed tariff. Therefore, the respondent may, after July 1st, submit figures of operating revenues and expenses to the Commission, upon which can be based application for a change in fare, if demonstrated to be just and reasonable.

The complaint is sustained.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

CHAMBERSBURG, GREENCASTLE & WAYNESBORO STREET RAILWAY COMPANY

v.

EMMIT HARDMAN.

[Complaint Docket No. 3778.]

Interstate commerce — Auto bus lines — Local routes — State control.

1. Jitney or auto bus transportation, largely in the hands of individuals and extending over comparatively short routes crossing the state line, are more properly left to the regulatory control of the state than to the control of Federal Government.

Certificate of convenience and necessity — Interstate commerce — Commission — Common carriers.

2. The Pennsylvania Public Service Company Law does not prohibit common carriers of passengers or property from engaging in interstate transportation, but requires in the interest of the public welfare that those proposing to engage in it within the commonwealth shall first secure from the Commission certificates of public convenience.

Certificate of convenience and necessity — Necessity for — Auto bus lines — Interstate commerce.

3. An auto bus line transporting passengers on a local route extending into the state of Pennsylvania, must secure a certificate of public convenience and necessity from the Pennsylvania Commission.

Interstate commerce — Police power — State control — Common carriers.

Discussion of power of the state to make reasonable rules and regulations affecting those carrying on interstate business within their border, p. 633.

[January 24, 1921.]

COMPLAINT that a bus line operates without a certificate of public convenience; complaint sustained and respondent ordered to cease and desist from operating until such time as he shall have applied for and obtained a certificate of public convenience.

Ainey, Chairman: The respondent, Emmit Hardman, applied to this Commission for a certificate of public convenience authorizing him to begin the exercise of the business of a common carrier of passengers by auto bus from Waynesboro, Pennsylvania, to a point at or near the Maryland state line, being a part of a contemplated route extending about two miles further in Maryland to Highfield in that state. The application, after hearing, was refused. (See Application Docket No. A 3586.) The portion of the proposed route, in Pennsylvania, from Waynesboro to the state line, was five or six miles in length.

The respondent testified in this proceeding that since the refusal of the Public Service Commission to grant him a certificate, he had carried passengers from Highfield, Maryland, to the Pennsylvania line, a distance of about two miles, for 45 cents. As a matter of fact, he actually carried them five or six miles further, wholly within Pennsylvania, and delivered them, without break in the journey, to the shops in Waynesboro, Pennsylvania, where they worked, and which evidently was their

destination, and this without additional charge. The Pennsylvania part of this route is substantially the same as that covered in the application referred to. It was upon this state of fact that the complaint under consideration was filed.

At the argument but one question was submitted. It was claimed by respondent that he is engaged in interstate transportation, and his business wholly limited thereto; that, therefore, he is not subject to the regulatory authority of the state of Pennsylvania, nor required to secure from this Commission a certificate of public convenience.

There are numerous populous localities within this commonwealth near state lines. If auto bus or jitney transportation may be engaged in, freed from the regulatory control of this Commission, a serious situation, affecting the safety, accommodation, and convenience of the public, would arise, and doubly so if such service is also beyond the supervision of the Federal authorities under existing laws.

It was admitted at argument, by counsel for complainant and respondent, that respondent is engaged in interstate business, and this may readily be conceded. It does not follow, however, that he may lawfully engage therein, within Pennsylvania, without first securing a certificate of public convenience authorizing him so to do, or subjecting himself to the lawful regulatory control of this commonwealth.

Further conceding that the terms of the commerce clause in the Federal Constitution are broad enough to authorize Congress to legislate with respect to this kind of passenger transportation, it is equally true that Congress has never done so. The Constitution prescribes that "Congress shall have the power" . . . "to regulate commerce with foreign nations and among the several states."

Turning now to the Federal statutes to ascertain the extent to which Congress has legislated with respect to common carriage of passengers, under the authority of the commerce clause, it is to be noted that the Interstate Commerce Act of 1887, and its amendments, applies to "common carriers engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water," etc. The recently enacted Transportation Act (1920), sometimes designated the

Esch-Cummins Act, does not change, in anywise, the limitations upon the kinds of common carriers it proposed to regulate. It is obvious, therefore, that there is no Federal statute regulating the form of interstate carriage in which this respondent is engaged, and if he is not subject to the regulatory authority of the state with respect to that service, then he can continue to engage in it without any supervision or compliance with any prerequisite condition enacted by the state in the interest of public safety, welfare and convenience.

[1] Jitney or auto bus transportation, largely in the hands of individuals and extending over comparatively short routes, and usually serving localities of limited areas, is of such a peculiarly local nature as to bring it within that class of interstate service which the courts have pointed out are more properly left to the regulatory control of the state than to be subjected to the control of Federal Government.

In the Minnesota Rate Cases, 230 U. S. 352, 402, 411, 57 L. ed. 1511, 48 L.R.A.(N.S.) 1151, 33 Sup. Ct. Rep. 729, Ann. Cas. 1916A, 18, the Supreme Court of the United States said:

"Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such case, Congress must be the judge of the necessity of Federal action. . . . And, wherever as to such matters, under these established principles, Congress may be entitled to act, by virtue of its power to secure the complete government of interstate commerce, the state power nevertheless continues until Congress does act and by its valid interposition limits the exercise of the local authority."

The text in Fuller Interstate Commerce, page 84, states:

"In general terms the act to regulate commerce was enacted to control and govern interstate transportation. But by its definition and specifications in the first paragraph of the first section it manifestly does not include certain varieties of interstate commerce—such, for example, as commerce between different states conducted by wagons moved by horses or propelled

by gasoline. By direction, the act is declared to relate only to transportation between different states in persons or property when conducted entirely by railroad, or partly by railroad and partly by water."

Our own superior court in Franke v. Johnstown Fuel Supply Co. 70 Pa. Super. Ct. 459, made a clear and definite statement:

"Numerous authorities are cited in support of the proposition that the power to regulate commerce among the states was granted by the people by means of the Constitution to the Congress of the United States; that that grant is exclusive; that no state may by any law or act prohibit or substantially restrain its freedom. . . . The general principle asserted is, of course, conceded. The power of Congress to regulate commerce among the states is supreme, and as to those subjects which require a general system or community of regulation, its power is exclusive and in subjects admitting of diversity of treatment according to the special requirements of local conditions, although the states may act within their respective jurisdiction until Congress sees fit to act, when Congress does act the exercise of its authority overrules all conflicting state legislation. Within these limitations, however, there remains in the state a wide field for the lawful exercise of authority appropriate to territorial conditions until Congress acts, although interstate commerce may be affected. Where the subject is one peculiarly of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such relation to interstate commerce as to be within the reach of Federal power."

In Pennsylvania Gas Co. v. Public Service Commission, 252 U. S. 23, P.U.R.1920E, 18, 64 L. ed. 434, 40 Sup. Ct. Rep. 279, it was held by the Supreme Court of the United States: "Until Congress acts under its superior authority by regulating the subject-matter for itself, a state Commission may regulate rates for natural gas transmitted from the source of supply outside of the state to local consumers in municipalities within the state."

Port Richmond & B. P. Ferry Co. v. Hudson County, 234

U. S. 317, 58 L. ed. 1330, 34 Sup. Ct. Rep. 821, was one where the Ferry Company sought to review the action of a board of freeholders of Hudson county in fixing its rates to be taken at its ferry within that county for the transportation of foot passengers for single trips to the New York terminal. The ferry was from Port Richmond, Staten Island, New York, to Bergen Point, New Jersey, and was not operated in connection with any railroad. The authority to regulate the rates by the board of freeholders was granted under an act of legislature of New Jersey. The question raised was whether the act of the legislature of New Jersey in conferring this right was repugnant to the commerce clause of the Federal Constitution. The United States Supreme Court held that the Ferry Company was engaged in interstate commerce; but the situation presented was essentially local, requiring regulation according to local conditions and that if Congress at any time undertakes to regulate such rates its action will control.

And see also in Missouri P. R. Co. v. Larabee Flour Mills Co. 211 U. S. 612, 53 L. ed. 352, 29 Sup. Ct. Rep. 214, it is held that, notwithstanding the creation of the Interstate Commerce Commission and the delegation to it by Congress of the control of certain matters, a state may, in the absence of express action by Congress, or by such Commission, regulate for the welfare and convenience of its citizens on local matters indirectly affecting commerce.

It has been held in numerous cases that the exercise of police power, sometimes expressed as the sovereign power, of the state cannot be interferred with by Congress under the commerce clause of the Constitution: United States v. DeWitt, 9 Wall. 41, 19 L. ed. 593. The exercise of the police power of the states in making reasonable rules and regulations, affecting those carrying on interstate business within their borders, has been upheld by the courts. In the Minnesota Rate Case, *supra,* it was held: "The legislation of the state, safeguarding life and property, and promoting comfort and convenience within its jurisdiction, may extend incidentally to the operations of the carriers in the conduct of interstate business, provided it does not subject that business to unreasonable demand and is not opposed to Federal legislation."

See also in Cleveland, C., C. & St. L. R. Co. v. Illinois, 177 U. S. 514, 516, 44 L. ed. 868, 20 Sup. Ct. Rep. 722, where the Supreme Court said: "Few classes of cases have become more common of recent years than those wherein the police power of the state over the vehicles of interstate commerce has been drawn in question. That such power exists and will be enforced, notwithstanding the constitutional authority of Congress to regulate such commerce, is evident from the large number of cases in which we have sustained the validity of local laws designed to secure the safety and comfort of passengers, employees, persons crossing railway tracks, and adjacent property owners as well as other regulations intended for the public good."

"State laws have been sustained by the supreme court requiring locomotive engineers to be examined and licensed by the state authorities; requiring such engineers to be examined from time to time regarding their ability to distinguish colors; requiring telegraph companies to receive dispatches and to transmit and deliver them with due diligence, as applied to messages from outside the state;" Fuller Interstate Commerce, 19.

Justice Harland in Hennington v. Georgia, 163 U. S. 299, 317, 41 L. ed. 166, 16 Sup. Ct. Rep. 1086, said: "Local laws of the character mentioned have their source in the powers, which the states reserved and never surrendered to Congress, of providing for the public health, the public morals and the public safety, and are not . . . regulations of interstate commerce simply because, for a limited time, or to a limited extent, they cover the field occupied by those engaged in such commerce."

[2] With these court deliverances in mind, let us examine the Pennsylvania Act, the Public Service Company Law, as it is involved in the present case; that law does not prohibit common carriers of passengers or property from engaging in interstate transportation, but requires in the interest of the public welfare and safety that those proposing to engage in it within the Commonwealth shall first secure from this Commission certificates of public convenience. The Commission is charged with the duty of ascertaining in each instance, before granting a certificate, that public safety, convenience, necessity and ac-

commodation are assured, and if the applicant fails by evidence to establish his personal fitness and qualifications, the sufficiency or adequacy of his equipment, his ability to provide for public convenience, and the necessity for the service, etc., his application is refused; otherwise it is granted.

This is a provision for public safety and welfare, and, in the light of the cases referred to, is clearly an exercise of the police power of the state, as much so and for the same reasons as have been advanced by the courts of highest resort for sustaining state statutes requiring the examination of locomotive engineers and others, prior to permitting them to be employed.

[3] In this case, the respondent heretofore applied for a certificate of public convenience. He did not satisfy the Commission in that application that public safety, convenience, accommodation, and necessity would be provided for, and he was, therefore, refused a certificate. He has since been operating over the same route for which he applied in defiance of the laws of the Commonwealth of Pennsylvania, and without a certificate. The complaint in this case should be sustained and an order issued that he and his agents and employees cease and desist from operating an auto bus in Pennsylvania, in common carriage of persons, until such time as he shall have applied for and obtained a certificate of public convenience, authorizing him so to do.

Note.—Supervision by Commission.

In Re Cresson Taxi Service, Application Docket No. 1998–1918, Oct. 22, 1918, the Pennsylvania Commission held that, upon an application for permission to operate a taxicab service, the internal operations of the partnership applying therefor are a concern to the Commission only as they affect the service to be rendered to the public. (P.U.R.1919C, 922.)

In Re California National Bank of Modesto, P.U.R.1921D, 486, April 14, 1921, the California Commission held that an assignment of operative rights by the operator of an auto stage, was illegal and void without the authorization of the Commission, and that an application for the transfer of operative rights was insufficient without the signature of the owner; and the transfer of a permit to operate was refused and the permit was indefinitely suspended where it was shown that service had been arbitrarily discontinued.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

LEHIGH VALLEY TRANSIT COMPANY

v.

ROBERT H. BAUDER et al.

[Complaint Docket No. 4080.]

Automobiles — Common carriers.

A special arrangement by which passengers of an auto bus line are current members of a "community auto club," the qualification for which is the payment of $1, upon which the members receive seven tickets as a gift, is in the nature of a subterfuge and does not alter the service of the auto bus line as a common carrier.

[June 14, 1921.]

COMPLAINT against auto busses operating as common carriers without a certificate of public convenience; sustained and auto busses ordered to cease and desist operation.

By the **Commission**: Primarily the question involved in this complaint is whether or not the respondents are operating auto-busses as common carriers in transporting passengers between the borough of Emaus and the city of Allentown, without having received a certificate of public convenience as required by the Public Service Company Law.

In November, 1919, the respondents in this case, under the name of the Emaus & Allentown Auto Bus Company, applied for a certificate evidencing the Commission's approval of the beginning of the exercise of the right of operating autos or auto-busses in common carriage between Emaus and Allentown. Under date of April 13, 1920, the Commission issued an order refusing the certificate and dismissing the application.

The complainant in this case alleges that subsequently to, and notwithstanding, the order of the Commission, the respondents operated as common carriers in violation of law. The respondents aver that they have not so operated, inasmuch as they have not held themselves out as common carriers within the meaning of the law; that although they transport passengers they do so only under special arrangement and upon individual bargain; that they have no fixed routes, no termini, no time schedules, and no established rates. The special arrangement to

which the respondent particularly refers is that all passengers must be members of what the respondents term the "Community Auto Club." The qualification for this club is the payment of $1, upon which, the respondents aver, they make a free gift of 7 tickets, each good for one ride. After such qualification, passengers can ride at any time on the busses either by payment of 15 cents cash fare, or by purchase of additional tickets at the rate of 7 for $1.

Evidence in this case is that such a "special arrangement" is clearly in the nature of a subterfuge. Further, the record establishes that the respondents are engaged in the business of transporting passengers in a manner that leaves no question that they are operating as common carriers. The "special arrangement" involved in the alleged club plan places practically no restriction whatever upon the transportation uses of the respondents' auto-busses. Even if it did, the service rendered would be of a call and demand nature, and would still clearly be within the requirements of the law. The record also clearly discloses the rates fixed and charged for service, and the method of operating the service, which is not materially different from that in general use by auto-bus carriers.

The Commission must take into consideration, in this case, as it did in refusing the application for a certificate of public convenience for an auto-bus service between Emaus and Allentown, that there is an established common carrier between these two points whose ability to serve the public would be seriously affected by competitive conditions such as the operation of an auto-bus service. The spur trolley line from Allentown, Emaus, and thence to Macungie, operated by the complainant, is one of a type quite common throughout the state, which is a weight and drag upon the revenues of the system which operates it. On several occasions the Commission has had before it difficulties arising from the nonprofitable operation of this spur line, and has sought by its orders to preserve, for the benefit of the riding public of Emaus and vicinity, an efficient and adequate service, at the minimum rate which the general revenues of the operating company would stand. Several times the company has indicated its desire to entirely abandon the service on this spur line, and the Commission would not be justified in permitting competitive

conditions that would endanger the continuance of the trolley service, or affect its efficiency or adequacy.

Therefore, the complaint is sustained and orders to cease and desist operation as common carriers will issue against the respondents.

The Public Service Commission of the Commonwealth of Pennsylvania.

PHILIPPINE ISLANDS PUBLIC UTILITY COMMISSION.

CEBU TRANSPORTATION COMPANY, INCORPORATED,

v.

JOSÉ SANCHEZ et al.

[Case No. 857.]

Monopoly and competition — Jurisdiction of Commission — Protection of existing utility — Regulation of rates.

The Philippine Islands Commission has no power to protect an automobile carrier from competition by preventing others from furnishing the same kind of service, but the Commission will protect the existing carrier from a reduction in rates by requiring all similar carriers to charge the existing rates until such rates have been changed in the manner provided by law.

[April 30, 1917.]

COMPLAINT alleging unlawful competition by defendants in operating the same business in the territory served by complainant and in furnishing service at reduced rates; order requiring defendants to charge the established rates.

By the **Commission**: This case is with regard to a complaint filed with this Commission under the date of March 31st, ultimo, by the Cebu Transportation Company, a public utility engaged in hauling passengers and freight by automobiles and automobile trucks between the municipalities of Danao and Bogó, in the province of Cebu, alleging unlawful competition with the business of said company on the part of Messrs. José Sanchez, Ki Ga, Ty Nga, Ka Nga, Francisco Ramil, Victoriano Go Opio, Demetrio Fernand, and Rufo Alfón, of Bogó, and Gabino Sepúl-

veda, of Cebu. As reasons for this complaint, plaintiff alleges: That since September 25, 1915, it has established, in combination with the train schedules, a regular and efficient daily passenger and freight automobile and auto truck service between the municipalities of Danao and Bogó and intermediate points and has for this purpose adopted a fixed schedule of rates which it has always observed, without variation; and that since two months ago the defendants are operating the same business between the aforesaid municipalities, but in an irregular manner, seeing that they have no fixed itinerary and have not adopted a fixed schedule of rates, one of them, Sr. Gabino Sepúlveda, going so far as to charge really unreasonable and ruinous fares.

On the 9th instant the Commission sent copies of the complaint by registered mail to all and each of the defendants, requiring them to reply thereto in ten days' time, and when this period had lapsed without the defendants having filed any reply, this Commission, by order of the 21st instant, set the present case for a hearing on the 26th instant, at 9 o'clock in the morning, in the municipal building of Cebu, copies of this order being mailed to all and each of the persons interested in this case.

The day and hour designated having arrived, the hearing of this case took place at the building indicated. There appeared at the same only Sr. Celestino Rodriguez, manager of the plaintiff company, on behalf of the latter, and Sr. Gabino Sepúlveda, one of the defendants. None of the others appeared, although, as Sr. Rodriguez stated while on the witness stand, the defendants who failed to appear had received notice of said hearing and had informed him that they were ready and willing to accept any action that might be taken here.

Defendant Gabino Sepúlveda then filed his reply, in which he sets forth the reason for which he has no fixed itinerary; namely, that the two automobile trucks owned by him are used principally for hauling the produce of his plantation in the municipality of Borbón, this province, though he takes occasionally advantage of any opportunity to do business that may offer itself, accepting freight and passengers from the public, for which he has the proper license, and collects at the rate of 3 centavos per kilometer, the same rate as that charged by plaintiff.

It appears from Sr. Rodriguez' testimony that the defendants

who have not appeared have adopted the following schedule of charges:

Passage from Bogó to Cebu or *vice versa*, per person, ₱5.00;
Between intermediate points, ₱0.05 per kilometer.

That this schedule is observed by the defendants when they see fit, because at times, for the purpose of competition, they charge unreasonable rates which are far from being remunerative, such as, for instance, ₱2 per person from Bogó to Cebu, or *vice versa*. That the schedule of the plaintiff company is as follows:

From Danao to Catmon, or from kilometer 33 to 57 ..... 3¢ per kilom.
From Catmon to Mabuli, or from kilometer 57 to 87 ..... 5¢ per kilom.
From Mabuli to Bogó, or from kilometer 87 to 101 ..... 3¢ per kilom.

That the difference in the rates in the above schedule is due to the condition of the road, the roads from Danao to Catmon being almost level and free from grades, so that the motor vehicles do not use much gasolene and there is less wear and tear on the machine, while the run from Catmon to Mabuli is a succession of up-and-down grades which causes the plaintiff company almost double the expense of the other runs mentioned in said schedule.

Sr. Sepúlveda is ready to accept the schedule of rates established by the plaintiff company and to observe it without variation. He has agreed with the representative of said company, Sr. Rodriguez, to consider and prepare a schedule of freight rates, to be adopted by both parties and submitted in due time to the Commission as base tariff, for record and approval.

This Commission holds that it absolutely lacks the power to grant to the plaintiff the privileges requested in its complaint, there being no provision in Act No. 2307 or the amendments thereof authorizing it to make such concession, and it is considered doubtful whether even the Philippine legislature can grant it, such concession being deemed unconstitutional. To protect the plaintiff against unlawful competition on the part of the defendants, these, who have not appeared, but have received timely notice of the hearing of this case, should be required to observe without variation the schedules adopted and published by them, as shown at said hearing, because in accordance with subsection (h) of § 16 of said Act 2307, as amended by § 13 of Act 2694, the defendants, as public utilities, the same as the

plaintiff company, cannot raise or lower their rates without complying with the provisions of the subsection mentioned.

The plaintiff company, as well as all and each of the defendants in this case, therefore should be, and they hereby are, directed to observe their respective schedules of rates without variation, and in case they should propose to raise or lower the same, to comply with the provisions of subsection (h) of § 16 of Act 2307, as amended by § 13 of Act 2694, and of Rule 23, as amended, of the late Board of Public Utility Commissioners, adopted by this Commission.

For the purposes of the present order, the plaintiff company and defendant Gabino Sepúlveda shall observe the following schedule:

From Danao to Catmon, or from kilometer 33 to 57 ..... 3¢ per kilom.
From Catmon to Mabuli, or from kilometer 57 to 87 ..... 5¢ per kilom.
From Mabuli to Bogó, or from kilometer 87 to 101 ..... 3¢ per kilom.

and the defendants José Sanchez, Ki Ga, Ty Nga, Ka Nga, Francisco Ramil, Victoriano Go Opio, Demetrio Fernand, and Rufo Alfon shall observe the following schedule:

Passage from Bogó to Cebu or *vice versa*, per person, ₱5.00;
Between intermediate points, ₱0.05 per kilometer.

The plaintiff company and defendant Gabino Sepúlveda are required to submit to the Commission the schedule of freight rates they propose to consider and prepare, as soon as the same shall be completed.

This order shall take effect immediately so far as the strict observance of the schedules hereinabove inserted is concerned.

Note.—In Re Frost (Utah) P.U.R.1919E, 660, the Utah Commission denied an application for permission to establish an automobile stage service where it appeared that existing taxicab and livery service was adequate, and that the stage rates would be higher than the existing charges. Commissioner Blood, delivering the opinion of the Commission, said: "Before a certificate of convenience and necessity can be issued, there must be a showing made that the public needs and requires the service—the evident intent of the law is that, where the public is being served adequately and satisfactorily, such service should not be disturbed."

TENNESSEE SUPREME COURT.

CITY OF MEMPHIS et al.

v.

STATE EX REL. RYALS.

(— Tenn. —, L.R.A.—, —, 179 S. W. 631.)

Constitutional law — Class legislation — Jitney indemnity bond — Exclusion of private automobiles.

1. The exclusion of automobiles privately owned and used, from the operation of a statute requiring the operator of a jitney to execute a bond to indemnify persons, including those not passengers, and property that may be injured by negligent operation, does not render the statute violative of state and Federal constitutional prohibitions against arbitrary class legislation.

Automobiles — Jitney — Definition.

2. A jitney is a self-propelled vehicle, other than a street car, traversing the public streets between certain definite points or termini, and as a common carrier conveying passengers at a 5 cent or some small fare, between such termini and intermediate points, and so held out, advertised, or announced.

Constitutional law — Police power — Jitney indemnity bond.

3. A statute requiring the operator of a jitney to execute a bond to indemnify those who may be injured by negligent operation is a proper exercise of the police power.

[October 23, 1915.]

APPEAL by defendants from an order of the Circuit Court of Shelby County, on habeas corpus by the state of Tennessee on the relation of S. B. Ryals against the city of Memphis and others, releasing the relator from the custody of the chief of police of the city, on having been arrested for a violation of a statute regulating jitneys; reversed and remanded.

Appearances: C. M. Bryan, Leo Goodman, and Chas. T. Cates, for appellants; Caruthers Ewing, for appellee.

Williams, J., delivered the opinion of the court:

Ryals, as relator, sued out a writ of habeas corpus to effect his release from the custody of the chief of police of the city of Memphis; he having been arrested for a violation of Acts 1915, chap. 60. The circuit judge released the relator, holding that act void, because violative of the constitutional provisions that inhibit arbitrary class legislation. Const. Tenn. art. 1, § 8,

and article 11, § 8; 14th Amendment of the Constitution of the United States.

The act thus attacked was evidently passed for the regulation of a class of motor vehicles recently brought into service in the principal cities of the state, commonly known as "jitneys."

By § 1 of the act it is provided that any person, firm, or corporation operating for hire any public conveyance propelled by steam, gasolene, or other power, "for the purpose of affording a means of street transportation similar to that ordinarily afforded by street railways (but not operated upon fixed tracks), by indiscriminately accepting and discharging such persons as may offer themselves for transportation," is declared a common carrier, and the business of all such carriers is declared to be a privilege.

Section 2 of the act makes unlawful the use and occupation of any street or alley or other public place in any incorporated city or town without first obtaining from such city or town a permit or license by ordinance giving the right to so use or occupy such street, alley, or other public place—the permit or license to embody "such routes, terms, and conditions as such city or town may elect to impose: Provided, however, that no such permit or license shall be granted which does not require the execution and filing of a bond," as provided by § 3.

Section 3 provides that before such common carrier may conduct his business he must execute a bond, with good and sufficient surety or sureties, in no case to exceed $5,000 for each car operated, conditioned that such common carrier will pay any damage that may be adjudged finally against such carrier as compensation for loss of life or injury to person or property inflicted by such carrier or caused by his negligence.

Section 4 makes it unlawful for such common carrier to use or occupy any street or alley or other public place without the permit or license aforesaid or without first executing and filing the bond as required by § 3.

The subsequent sections need not be outlined, since the provision requiring the execution of a bond is the only one inveighed against by relator, charged as he was with the operation of a jitney automobile without having executed such bond.

The circuit judge, after calling attention in his opinion to the fact that the act does not limit the condition of the bond to a

protection of the passengers of such a common carrier, but includes the payment of damages by reason of negligence resulting in injury to pedestrians or to property generally, expressed the view that the provision of the statute might be upheld if the bond required had to do only with the protection of passengers, and further said: "This act imposes upon the carrier burdens not only in his character of common carrier, but also burdens in his capacity of an ordinary user of the streets. Using the same kind of vehicle, with the same motor power, in identically the same manner as private operators of automobiles, he is required to give a bond to protect other users of the streets against his negligence. No such requirement is made of any other person using similar vehicles."

The act was therefore held invalid, with result that the city has appealed to this court.

[1, 2] Under the provisions of the state and national Constitutions, above referred to, the same rules are applied as to the validity of classifications made in legislative enactments. When an effort is thus made to distinguish and classify as between citizens, the basis therefor must be natural, and not arbitrary or capricious. The classification must rest on some substantial difference between the situation of the class created and other persons to whom it does not apply. State ex rel. Astor v. Schlitz Brewing Co. 104 Tenn. 730, 78 Am. St. Rep. 941, 59 S. W. 1033, and cases cited.

However, classification for such purposes is not invalid because not depending on scientific or marked differences in things and persons, or in their relations. It suffices if it is practical, and it is not reviewable unless palpably arbitrary. Orient Ins. Co. v. Daggs, 172 U. S. 562, 43 L. ed. 554, 19 Sup. Ct. Rep. 281, cited with approval in State ex rel. Astor v. Schlitz Brewing Co. supra.

"When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." Motlow v. State, 125 Tenn. 547, L.R.A.—, —, 145 S. W. 177,

following Lindsley v. National Carbonic Gas Co. 220 U. S. 61, 55 L. ed. 369, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160.

Having these principles in mind for guidance, we may conceive that, from the experience developed by the operation of jitney automobiles at the time of the enactment of the regulatory statute, the legislature deemed the provision for a bond to be necessary because it realized that by reason of the small fare charged by such operators the tendency would be for them to invest in cheap or secondhand machines, oftentimes fragile in character; that frequently the vehicle would not be owned outright, but only subject to a lien or by way of lease; that, by reason of the limited size and carrying capacity of the conveyances, an increased congestion of the streets and public places would follow, as well as an overtaxing of the capacity of the given conveyance; that they would have no fixed track upon which to run, moving at will over the entire street surface, and in their crossing over and stopping along the curb between crossings, or at street crossings, danger to persons and property would be augmented; that, by reason of the competition of the many engaged in the business, frequent contests between the operators for points of vantage in the streets would follow; that there was a tendency fraught with danger in the many so engaged seeking the streets of heaviest travel for passengers, thus leading to congestion, as well as in hasty efforts made to head off and divert those waiting on the curb as offerers for passage on street railways; that the desire and necessity to collect many small fares would tempt operators to indulge in swift and careless running; that by reason of receiving and discharging passengers at short, unscheduled intervals, there would be an interruption of traffic and an endangering of other vehicles in the streets; that by reason of the small investment required many who are financially irresponsible would embark in the business; that the collection of damages from the operators would be difficult, and in many instances impossible.

We come now to the test of the law made by the circuit judge, and which led him to denounce the classification,—the inclusion of jitney automobiles and the exclusion of automobiles privately owned and used. We think that such a classification is easily sustainable by reason of the applicability of many of the con-

siderations above enumerated. The privately owned vehicle ordinarily has but a single destination, at which it comes to rest. Its use is not urged to or towards the limit in order to the reaping of profits. We are unable to see merit in the distinction taken by the circuit judge, when he intimated the opinion that a classification of the jitney from privately used automobiles might be sustained only so far as indemnity for damages done to passengers was concerned. Most of the dangers that surround such passengers in a substantial sense beset also the users of the street.

Contrasting the jitney with street railway cars, to ascertain whether there be arbitrary classification: The street railway, by reason of its having tracks at definite places assigned it by municipal authority, on which tracks its traffic must move, is less liable to cause injury; and the substantial nature of its cars, and particularly the fixity, permanency, and great cost of its roadbed, afford an anchored indemnity in respect of its liability for negligence. Other marks for differentiation, appearing in the above outline of considerations imputable to the legislative mind, need not be reiterated.

Assuming for test purposes (without meaning to decide or to intimate a decision) that taxicabs are common carriers, and that they are not included within the terms of the statute, does their exclusion operate to make the classification unreasonable and arbitrary?

The word "taxicab" is one of recent coinage, to describe a motor-driven conveyance that performs a service similar to the cab or hackney carriage, held for hire at designated places at a fare proportioned to the length of the trips of the several passengers, who are taken to be carried to destinations without regard to any route adopted or uniformly conformed to by the operator. The jitney holds itself out to accommodate persons who purpose traveling along a distinct route chosen by the operator. Operators of taxicabs have not the temptation or necessity, we may assume, of choosing the most traveled streets, since those less traveled afford them better opportunities to serve the object their owners have in view. It may be that a larger investment is ordinarily required to enter the taxicab business than the other, and that the conveyances would be less in number on this account, as well as because of the greater fare charged, not to

mention other differences to be drawn from the above summary. In New York an ordinance regulating the conduct of the business of public hackmen has been held not to be discriminatory, because it applied only to those engaged in transporting passengers for hire who solicit business on the streets, or because taximeters are required to be attached to motor-driven vehicles only. Yellow Taxicab Co. v. Gaynor, 82 Misc. 94, 143 N. Y. Supp. 279, affirmed in 159 App. Div. 893, 144 N. Y. Supp. 299.

The Supreme Court of the United States has held that the inclusion of producing, and the exclusion of nonproducing, venders of milk in legislation was valid, the court saying: "A picture is exhibited of producing and nonproducing venders [of milk] selling milk side by side; the latter, it may be, a purchaser from from the former; the act of one permitted, the act of the other prohibited or penalized. If we could look no farther than the mere act of selling, the injustice of the law might be demonstrated; but something more must be considered. Not only the final purpose of the law must be considered, but the means of its administration,—the ways it may be defeated. Legislation, to be practical and efficient, must regard this special purpose as well as the ultimate purpose." St. John v. New York, 201 U. S. 633, 50 L. ed. 896, 26 Sup. Ct. Rep. 554, 5 Ann. Cas. 909, affirming 178 N. Y. 617, 70 N. E. 1104.

The same court upheld a classification of vehicles (in respect of their respective owners' rights to use the streets) by which advertising wagons or buses were excluded, while ordinary business wagons, when engaged in the usual business of the owner, and not used merely or mainly for advertising, were permitted to use the streets while exhibiting business notices. Fifth Ave. Coach Co. v. New York, 221 U. S. 467, 55 L. ed. 816, 31 Sup. Ct. Rep. 709, affirming 194 N. Y. 19, 21 L.R.A.(N.S.) 744, 86 N. E. 824, 16 Ann. Cas. 695. See also Provident Inst. for Sav. v. Malone, 221 U. S. 660, 55 L. ed. 899, 34 L.R.A.(N.S.) 1129, 31 Sup. Ct. Rep. 661.

The word "jitney" we think may be defined to be a self-propelled vehicle, other than a street car, traversing the public streets between certain definite points or termini, and as a common carrier conveying passengers at a 5-cent or some small fare,

between such termini and intermediate points, and so held out, advertised, or announced.

In the case of Ex parte Cardinal, — Cal. —, L.R.A.1915F, 850, P.U.R.1915E, 282, 150 Pac. 348, where was involved an ordinance substantially so defining a jitney, and requiring the owner, before operating such machine, to obtain a permit, and to give a bond or provide a policy of insurance to protect those injured, the court upheld the ordinance as not creating an arbitrary class, and said:

"It is manifest that as to automobiles there may be circumstances existing, by reason of the manner and character of their use on the streets, that will warrant, in the interest of the safety of the public, special regulations as to those used for a particular purpose and in a particular way. . . . We entertain no doubt whatever as to the power of the board of supervisors of the city and county of San Francisco to make special regulations relating to the use on the streets of such vehicles as are described in § 1 of the ordinance, and therein termed jitney buses. It is argued that the charge of 10 cents or less for passage is no proper criterion by which to classify for such a purpose as that of this ordinance. It may well be, however, that the special danger to the public sought to be guarded against is confined to just the class of vehicles described, *viz.*, automobiles used on the public streets for the carriage of passengers at a very small charge. . . . It is the 'low fare' automobile for the carriage of passengers on the streets of San Francisco that the ordinance is designed to regulate. The real question in this connection is whether there is sufficient distinction between the operation on the public streets of these 'low charge' automobiles for the carriage of passengers and the operation of self-propelled motor cars on which a much higher charge is made, to warrant the imposition of the special regulations made by this ordinance. It is a matter of common knowledge on the part of those familiar with conditions in our large cities that the comparatively recent introduction of this class of vehicle, commonly known as the 'jitney,' for the carriage of passengers on the public streets, for a charge closely approximating that made on street cars, in view of the almost phenomenal growth of the institution, has made clearly apparent the necessity of some special regulations in order to reasonably pro-

vide for the comfort and safety of the public. It may well be that the board of supervisors concluded that, in view of the number of this class of public conveyances that were operated upon the public streets, especially upon the principal streets already occupied almost to overflowing during the hours of heaviest traffic by street cars and other vehicles, as well as by pedestrians at street crossings, the speed at which they would naturally be operated in order to make them pay on such a low rate of fare, and the probable lack of substantial financial responsibility on the part of very many undertaking to operate such vehicles, special regulations as to condition of car, . . . as well as security to protect against improper or negligent operation, were essential to the public safety. We certainly cannot say that the legislative body was not justified in so determining."

Counsel for the appellee relator treats his case against the act as made out if he be able to present some points of similarity in the jitney and the taxicab or privately operated automobile. But mathematical or logical exactness, in every aspect, in a division for classification, is not always possible, and it is not required in order to validity. "The best that can be done is to keep within the clearly reasonable and practicable. That is accomplished where there are such general characteristics of the members of the class as to reasonably call for special legislative treatment. That may be true, generally, and yet some of such characteristics sometimes may be found to exist outside of the boundaries of the class." Mehlos v. Milwaukee, 156 Wis. 591, 51 L.R.A.(N.S.) 1009, 146 N. W. 882, Ann. Cas. 1915C, 1102; Central Lumber Co. v. South Dakota, 226 U. S. 157, 57 L. ed. 164, 33 Sup. Ct. Rep. 66; Motlow v. State, 125 Tenn. 547, L.R.A.—, —, 145 S. W. 177; 6 R. C. L. p. 360, § 373.

We therefore hold that the segregation of the jitney automobile for regulation in the matter of the execution of an indemnity bond by its owner is not vicious or unreasonable class legislation.

Counsel for appellee commends to our consideration People ex rel. Valentine v. Berrien Circuit Judge (People ex rel. Valentine v. Coolidge) 124 Mich. 664, 50 L.R.A. 493, 83 Am. St. Rep. 352, 83 N. W. 594, and Gibbs v. Tally, 133 Cal. 373, 60 L.R.A. 815, 65 Pac. 970. In the first of these cases it was held

that an act requiring all merchants who sell farm produce on a commission to execute a bond of $5,000 to faithfully perform their contracts was unwarranted class legislation, and that the act could find no support in the police power, since there was nothing in the business hostile to the comfort, health, morals, or even convenience of a community. The second case involved an effort on the part of the legislature to require the owner of property, who contracts for the placing of a building thereon, to furnish a bond for the benefit of laborers and materialmen on terms that would make him liable for 25 per cent above the contract price. The court held that the act there in question was not justifiable by the police power, and was violative of constitutional provisions pointed out.

We fail to see the pertinency of these cases to the one at bar, which involves the right to regulate a common or public carrier in respect of the use of public streets.

[3] It is too clear for extended discussion that it was competent for the legislature under the police power to regulate the use of the streets and public places by jitney operators, who, as common carriers, have no vested right to use the same without complying with a requrement as to obtaining a permit or license. The right to make such use is a franchise, to be withheld or granted as the legislature may see fit. Dill. Mun. Corp. §§ 1210, 1229; Fifth Ave. Coach Co. v. New York, 194 N. Y. 19, 21 L.R.A.(N.S.) 744, 86 N. E. 824, 16 Ann. Cas. 695. Further, the use or license may be conditioned on the execution of a bond for the indemnification of those injured. So held in respect of motor-propelled vehicles in the recent cases of State ex rel. Case v. Howell, 85 Wash. 294, 147 Pac. 1159, Greene v. San Antonio, — Tex. Civ. App. —, 178 S. W. 6, Ex parte Dickey, — W. Va. —, L.R.A.1915F, 840, P.U.R.1915E, 93, 85 S. E. 781, and Ex parte Cardinal, supra.

We are of opinion that the statute is not subject to the objections urged by the appellee, and that therefore the lower court erred in its disposition of the case. Reversed and remanded; all costs to be paid by the relator.

TENNESSEE SUPREME COURT.

MEMPHIS STREET RAILWAY COMPANY

v.

RAPID TRANSIT COMPANY et al.

(— Tenn. —, 179 S. W. 635.)

Appeal and review — Appellate jurisdiction of courts — Constitutional question.

1. The supreme court of Tennessee has jurisdiction of a direct appeal to it from an order of a trial court dismissing a bill by a street railway to enjoin the operation of jitneys upon the city streets, where the application of a statute regulating jitneys is invoked by the complainant and its constitutionality is questioned by the defendant, although the case can be decided without consideration of the constitutional question.

Automobiles — Jitneys — Conditions of right to operate — Statutory requirements.

2. Jitneys have no right to operate on the streets of a city where statutory provisions empowering the city to pass an ordinance authorizing the issuance of licenses and requiring operators to procure licenses and to execute indemnity bonds against liability for injuries have not been followed.

Injunction — Illegal operation of jitneys — Nonexclusive street railway franchises — Property right.

3. A street railroad company, although owning a nonexclusive franchise to operate in a city, has a property right that will entitle it to enjoin the competitive operations of jitneys without legislative or municipal authority.

Injunction — Illegal operation of jitneys — Readiness to comply with statute requirements.

4. An injunction to restrain the operation of jitneys in defiance of statutory requirements of license and execution of indemnity bonds against liability for injuries cannot be refused on the ground that a ready compliance with the statute will render an injunction useless, where the city has failed to authorize the issuance of licenses, and where the injunction will eliminate irresponsible operators.

Injunction — Illegal operation of jitneys — Public nuisance — Loss of revenue by street railway.

5. The operation of jitneys in defiance of statutory requirements of license and execution of indemnity bonds against liability for injuries, and in a manner to imperil the safety of the public, is a public nuisance that may be enjoined by a street railroad that suffers material loss of revenue from the illegal competition.

[October 23, 1915.]

APPEAL by complainant from an order of the Chancery Court of Shelby County dismissing on demurrer the bill of the Memphis Street Railway Company to enjoin the Rapid Transit Company and others from operating jitneys in competition with street cars; reversed.

Appearances: Charles T. Cates, Jr., and Wright, Miles, Waring, & Walker, for appellant; Caruthers Ewing, for appellees.

Green, J., delivered the opinion of the court:

This bill was filed by the Memphis Street Railway Company to enjoin the Rapid Transit Company and other defendants from operating jitneys on the streets of Memphis in competition with the complainant's street cars. A demurrer was interposed by defendants and sustained by the chancellor, and the complainant has appealed to this court.

Complainant alleged that it was organized under the laws of Tennessee, and had a franchise from the city of Memphis to operate a street railway system in that city; that it had expended in excess of $10,000,000 in constructing and equipping its street railway lines; that it operated about 129 miles of track, extending over all parts of the city; and that it had complied with all the laws of Tennessee and all the terms of its franchise from the city of Memphis.

The bill further averred that the defendants were engaged in operating jitneys or jitney buses upon the streets of Memphis in competition with the complainant, and that defendants were conducting this business without having made any attempt to comply with the statute of Tennessee regulating said business; that said defendants were operating their automobiles on the same streets upon which complainant ran its cars; that the jitneys were running at high rates of speed, cutting in front of complainant's cars, and racing by the cars in their efforts to reach the stopping places first, in order to pick up passengers; that they frequently ran in front of complainant's cars, thus forcing the cars to be stopped in order to prevent accident; that they often ran dangerously close to and by complainant's cars while the cars were standing for the purpose of taking on and discharging passengers, thereby causing many very serious accidents and even

deaths. It was said that such operation of the said jitneys was hindering and impeding complainant from giving first-class service; that such illegal and unauthorized competition was depriving complainant of a large amount of revenue, by unlawfully diverting from it intended passengers upon its cars. The bill contains other charges upon which it is not necessary to dwell.

The general assembly of Tennessee, in 1915, by chapter 60, Acts of that year, undertook to regulate the jitney business in the cities and towns of this state. This act declared those operating such vehicles to be common carriers, and provided that the operation of these conveyances should be unlawful in the incorporated cities or towns of this state without first obtaining a permit or license under ordinance from said city or town; and it was further provided that no such license should be issued unless the owner or operator filed with the clerk of the county court in the county in which the business was proposed to be done, a bond of not less than $5,000 to cover loss of life or injury to person or property inflicted by such carrier or caused by his negligence. It was further enacted that said license should embody such routes, terms, and conditions as the city or town might elect to impose, provided that no such permit or license should be granted which did not require the execution and filing of the bond mentioned above. Said act is set out in the margin of this opinion.[1]

[1] An Act to Define as Common Carriers within This State, Persons, Firms, and Corporations Operating Certain Self-propelling Public Conveyances and Affording Means of Street Transportation Similar to That Ordinarily Afforded by Street Railways but not Operated Upon Fixed Tracks, to Declare the Business of All Such Common Carriers a Privilege and to Forbid and Declare a Misdemeanor Their Operation upon Streets, Alleys, Public Places of Incorporated Cities or Towns without Obtaining Permits or Licenses from Such Cities or Towns and Giving Bond to Indemnify against Loss of Life and Damage to Person and Property; and to Authorize Incorporated Cities and Towns of This State to Grant Permits and Licenses to Such Carriers to Operate over Streets, Alleys, and Public Places and to Fix Routes, Terms and Conditions of Such Operation, and to Limit Such Operation in the Interest of Public Convenience and Safety, and to Impose a Tax for the Exercise of the Privilege Herein Granted.

Section 1. Be it enacted by the general assembly of the state of Tennessee, that any person, firm, or corporation operating for hire any public conveyance propelled by steam, compressed air, gasolene, naphtha, electricity, or other motive power for the purpose of affording a means of street trans-

[1] The demurrer of defendants challenges the constitutionality of the act referred to and relied on by complainant. It does not distinctly appear whether the chancellor passed on the constitutionality of the statute or based his decision on other grounds of the demurrer. It is said by counsel for defendants that the result below was reached without consideration of the validity of the act in question, and it is urged that the case can be determined in this court without reference to the said act. Defendants therefore insist that this court is without jurisdiction, and the case is properly one for the court of civil appeals; that no constitutional question is involved.

We are referred to cases in which it is said that the constitutionality of a statute will not be considered or adjudged if the case can be otherwise decided. We do not think, however, such a rule should control here. We have formerly said that, when any question involving the constitutionality of an act of the legislature is bona fide made and relied on in a case, this court should take appellate jurisdiction of such a case under chapter 82 of the Acts of 1907. Campbell County v. Wright, 127 Tenn. 1, 151 S. W. 411.

The chief contention of complainant in this case is that defendants are outlaws on the streets of Memphis, with no right to pursue their business, by reason of the fact that the city has passed no ordinance giving them permission to operate, and be-

---

portation similar to that ordinarily afforded by street railways (but not operated upon fixed tracks) by indiscriminately accepting and discharging such persons as may offer themselves for transportation along the way and course of operation, be and the same is hereby declared and defined to be a common carrier, and the business of all such common carriers is hereby declared to be a privilege.

Section 2. Be it further enacted, that it shall be unlawful for any common carrier as defined in § 1 of this act, to use or occupy any street, alley, or other public place in any incorporated city or town of this state without first obtaining from such city or town a permit or license by ordinance giving the right to so use or occupy such street, alley, or other public place, such permit or license to embody such routes, terms, and conditions as such city or town may elect to impose: Provided, however, that no such permit or license shall be granted which does not require the execution and filing of a bond as provided for in § 3 of this act.

Section 3. Be it further enacted, that any such common carrier, before operating any public conveyance as aforesaid, in addition to obtaining a permit or license as aforesaid, shall execute to the state of Tennessee and file with the clerk of the county court of the county in which the business is to

cause they have made no bonds, according to the provisions of chapter 60, Acts of 1915. Defendants, as we have said, challenge the constitutionality of this act. We think, therefore, the constitutional question in this case is bona fide, and that constitutional rights are relied on.

Although we appreciate the delicacy of passing on the validity of an act of the legislature, such a duty is often imposed upon us, and we must not dodge our jurisdiction. Where an act of the legislature undertakes to regulate a particular subject, and the application of such an act is invoked by one party in a suit involving that subject, and the validity of the act is questioned by the other party, we think it proper that the statute should be tested. Statutes are enacted to make the law plain and rights distinct. They are intended to be administered, and it is not incumbent upon the courts to enter upon a difficult and doubtful investigation of the rights of the parties under the common law —such rights being defined by a statute—merely to avoid passing on the constitutionality of such a statute.

So we think that there is a constitutional question in this case properly made, and that this court has appellate jurisdiction.

Chapter 60, Acts of 1915, has been considered, and the act adjudged valid and constitutional, in the case of Memphis v. State, — Tenn. —, L.R.A.—, —, ante, 825, 79 S. W. 631, opinion in which has just been filed by Mr. Justice Williams.

be carried on, and renew or increase from time to time as may be required by such city or town, a bond with good and sufficient surety or sureties, to be approved by the mayor of such incorporated city or town, in such sum as such city or town may reasonably demand (in no case, however, in a sum less than $5,000 for each car operated), conditioned that such common carrier will pay any damage that may be adjudged finally against such carrier as compensation for loss of life or injury to person or property inflicted by such carrier or caused by his negligence.

Section 4. Be it further enacted, that any common carrier as defined in § 1 of this act which shall use or occupy any street, alley, or other public place in any incorporated city or town of this state without first obtaining a permit or license to so use and occupy such street, alley, or other public place, or shall operate any such conveyance without first executing and filing bond as required by § 3 of this act, shall be guilty of a misdemeanor, and shall upon conviction be fined not less than $50 nor more than $100 for each offense, and each day upon which such common carrier shall so unlawfully use or occupy any street, alley, or other public place in any incorporated city or town of this state, shall constitute a separate offense.

It is not, therefore, necessary to further discuss this question in this opinion.

[2] The act being valid, there is little trouble as to its proper construction. We have heretofore intimated our conception of its meaning. Under it, no jitney may be operated in any city or town of the state of Tennessee, except under a license or permit from said city or town, issuing under an ordinance passed in conformity with the said statute, nor shall such permit or license be issued until the statutory bond has been executed and filed with the county court clerk. In other words, jitneys have no right to operate on the streets of any incorporated city or town in Tennessee until an ordinance has been passed providing for licenses or permits, and such permits or licenses have been secured, and they have no right then to operate until they have made bond as required by the statute.

In the case before us the city of Memphis has passed no ordinance authorizing the issuance of licenses or permits to engage in this business, nor have the defendants undertaken to procure any such licenses, nor have they executed any bonds.

It is very clear, then, that defendants have no right whatever to do business on the streets of Memphis. They are lawbreakers, subject to criminal prosecution, operating in direct violation of the statute of this state.

[3] These conclusions upon the statute being reached, many

Section 5. Be it further enacted, that all incorporated cities and towns of this state be and they are hereby authorized and empowered to grant permits or licenses to such common carriers to operate over the streets, alleys, and public places of such cities and towns, and to fix in such licenses and permits the routes, terms, and conditions upon which such common carriers may operate, subject to the limitations contained in § 2 of this act: Provided that no license or permit shall be granted to any such common carrier without the execution and filing of bond as required by § 3 of this act being required.

And all such incorporated cities and towns are hereby authorized and empowered to impose upon all such common carriers a tax for the exercise of the privilege herein granted.

Section 6. Be it further enacted, that if any section or part of this act be for any reason held unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this act, but such remaining portions shall be and remain valid.

Section 7. Be it further enacted, that this act take effect from and after its passage, the public welfare requiring it.

of the questions presented by the demurrer of defendants as to their common-law rights are eliminated from further consideration. The status of defendants is fixed by the act. There remains, however, the question as to the right of the complainant to an injunction against defendants under the circumstances above detailed.

The complainant does not seek an injunction here on the theory that it is possessed of an exclusive franchise to conduct the business of common carrier of passengers on the streets of Memphis. The contention of complainant is that, having been granted a franchise as such common carrier, it has a property right that will entitle it to restrain any person or corporation from attempting to engage in the business of common carrier of passengers on the streets of Memphis, in competition with complainant, without legislative or municipal authority. Complainant concedes that its franchise is not exclusive, in the sense that a similar franchise might not be granted to another to be exercised and enjoyed in the city of Memphis; but it maintains that its franchise is exclusive against all persons upon whom similar rights have not been conferred by legislative sanction.

We think this contention is well founded and supported by the great body of authority. In Pomeroy's Equity Jurisprudence it is said:

"An injunction is the appropriate remedy to protect a party in the enjoyment of an exclusive franchise against continuous encroachments. 'Such continuous encroachments constitute a private nuisance, which courts of equity will abate by injunction. The jurisdiction rests on the firm and satisfactory ground of its necessity to avoid a ruinous multiplicity of suits, and to give adequate protection to the plaintiff's property in his franchise.' To be entitled to relief, a plaintiff need show only that he is entitled to a franchise, and that there is continuous interference therewith by the defendant. It is not necessary that the plaintiff first establish his right at law." 6 Pom. Eq. Jur. § 583.

Further it is said:

"It is not necessary, 'to entitle the owner to relief in equity, that the franchise should be an exclusive franchise in the sense that the granting of another similar franchise to be exercised and enjoyed at the same place would be void.' The theory is 'that

the defendant who has no franchise, is acting in violation of law in operating . . . without authority from the sovereign power, and that the owner of the franchise may complain of and restrain such illegal acts when they result in injury to his franchise, which, in the eye of the law, is property. As to the one who is invading his rights without legal sanction, the franchise is an exclusive franchise, although the owner of it might not be entitled to any protection as against the granting of a similar franchise to another.'" 6 Pom. Eq. Jur. § 584.

In dealing with a controversy between two electric light companies, one without a franchise, the supreme court of Oklahoma observed:

"When plaintiff accepted its franchise, it did so subject to the power of the municipality to grant to other persons or corporations similar franchises, and with the knowledge that it might be compelled to exercise its rights under its franchise with others exercising similar rights. If, by the competition of rival companies to whom the use of the streets and public grounds has been granted by the municipality, plantiff is rendered unable to discharge the obligations of its contract to furnish the city and its inhabitants with light and power at stipulated prices, except at a financial loss to it, plaintiff cannot complain, for it must be held to have contemplated such condition might arise, and to have agreed thereto when it accepted the franchise; but such cannot be said of the defendant, who unlawfully occupies the streets and public grounds of the city in competition with plaintiff. By its unlawful acts defendant can and will take from plaintiff a portion of its business. At the same time, defendant is under no obligation to the city or its inhabitants, and is all the while maintaining upon the streets and public grounds of the city a public nuisance, and the loss plaintiff sustains is to defendant its fruits from its violation of the law. By these unlawful acts of defendant, plaintiff may be rendered financially unable to comply with the obligations of its contract, and may be subjected to suits for damages, mandamus proceedings to enforce the performance of its contract, or an action to forfeit its franchise. Defendant does not undertake to compete with plaintiff for the business of the city and its inhabitants by furnishing to them light and power other than by the use of the streets and alleys. Its right

to sell light and power is not dependent upon any franchise, but its rights to use the streets and public grounds of the city for that purpose does depend upon the consent of the city; and, when it uses the streets without that consent, it is not only guilty of maintaining a public nuisance, but also inflicts upon plaintiff a special injury by its unlawful act, which may be restrained." Bartlesville Electric Light & P. Co. v. Bartlesville Interurban R. Co. 26 Okla. 457, 29 L.R.A.(N.S.) 81, 109 Pac. 229.

In a similar case the New Jersey court said:

"Legislative grants of franchises of the nature claimed by complainant, whether granted by special . . . privileges which are necessarily exclusive in their nature as against all persons upon whom similar rights have not been conferred, for any attempted exercise of such rights, without legislative sanction, is not only an unwarranted usurpation of power, but operates as a direct invasion of the private property rights of those upon whom the franchises have been so conferred. Raritan & D. B. R. Co. v. Delaware & R. Canal Co. 18 N. J. Eq. 546, 569; Pennsylvania R. Co. v. National R. Co. 23 N. J. Eq. 441, 447; Jersey City Gas Co. v. Dwight, 29 N. J. Eq. 242, 250; Elizabethtown Gaslight Co. v. Green, 46 N. J. Eq. 118, 124, 18 Atl. 844, 6 Pom. Eq. Jur. § 584. It follows that, if complainant is at this time entitled to exercise in the disputed territory the privileges set forth in the legislative act referred to, and defendant, as claimed, enjoys no legislative sanction for the conduct sought to be enjoined, complainant will be entitled to the relief prayed for." Millville Gaslight Co. v. Vineland Light & P. Co. 72 N. J. Eq. 305, 65 Atl. 504.

The same question has often arisen with reference to ferries, and the courts have awarded injunction against the operation of unlicensed ferries at the suit of the ferryman legally authorized to conduct his business.

In one of these cases the supreme court of Mississippi said:

"A public ferry cannot be erected and operated in this state without a special license therefor, and such license bestows upon the licensee the exclusive right of such ferry,—exclusive as to all persons, except that the board of supervisors may establish as many ferries as the public convenience may require at the same or adjacent places of crossing. Every such licensee, however, is

required to give bond with security for the performance of the obligations assumed by him, which impose upon him the duties of keeping a proper and safe boat and equipments, and of his constant attendance at the ferry, and of the due and speedy transportation over it of all persons and property desired to be transported, and to secure these and other stringent duties required of him he is placed under heavy liabilities, civil and criminal, for their performance, all of which is necessary for the public convenence, and as a remuneration for his services and liabilities he is allowed a fixed rate of ferriage. The right secured to the licensee is a legal right, created by public law, and not to be infringed except by the authority of the state itself; and such right would be of no avail, unless the party holding it is protected by law in its enjoyment. Indeed, it is a maxim of law that there is no right without a remedy, for 'whensoever the law giveth any right,' says Coke, 'it also giveth a remedy.' Co. Litt. 56. The ferry right of appellant should have secured to him the tolls lost to him by the infringement of his right by the defendants, and they should make him whole for the damages that he has sustained, to be measured by the amount of tolls diverted." McInnis v. Pace, 78 Miss. 550, 29 So. 835.

Other ferry cases are Patterson v. Wollmann, 5 N. D. 608, 33 L.R.A. 537, 67 N. W. 1040; Green v. Ivey, 45 Fla. 338, 33 So. 711; Tugwell v. Eagle Pass Ferry Co. 74 Tex. 480, 9 S. W. 120, 13 S. W. 654. All these cases sustain the views expressed in the foregoing quotations, and many other cases in which the same doctrine is recognized are collected in a note to Bartlesville Electric Light & P. Co. v. Bartlesville Interurban R. Co. reported in 29 L.R.A.(N.S.) 77.

We are unable to follow the effort of learned counsel for the defendants to distinguish the cases from which we have quoted from the case here presented. We think the foregoing authorities are sound and should control this controversy.

When a business may not be conducted as a matter of common right, but legislative authority is necessary, such authority, when conferred, is exclusive against all persons not endowed with like authority. Such rights, so bestowed by law, may not be infringed, except by authority of the state, and will be protected by injunction against unlawful invasion.

As a matter of course, the observation just made is only applicable to clear cases, as the case before us. If the franchise or license of a complainant was doubtful, an injunction would not be awarded to protect it, nor could the validity of a license or franchise possessed by a competing defendant be questioned, and its exercise restrained, in proceedings of this character. Geneva-Seneca Electric Co. v. Economic Power & Constr. Co. 136 App. Div. 219, 120 N. Y. Supp. 926; Coffeyville Min. & Gas Co. v. Citizens' Natural Gas & Min. Co. 55 Kan. 173, 40 Pac. 326; Market Street R. Co. v. Central R. Co. 51 Cal. 583. We are in full accord with the views expressed in these and like cases. Questions upon the regularity of a charter, the validity of a franchise, and the like, are to be determined upon suit of the attorney general or other constituted authority, and not on suit of a competing corporation.

In the case at bar, however, defendants make no claim to any license or franchise, although such license is a statutory prerequisite to the pursuit of defendants' business. The validity of complainant's franchise, on the other hand, is not impeached.

[4] We are referred to the case of Levisay v. Delp, 9 Baxt. 415, as laying down a contrary rule. In that case a licensed ferryman, the owner of one bank of the river, sought an injunction against the unlicensed operation of a ferry in competition by the owner of the other bank of the river. Under Shannon's Code, §§ 1697, 1703, the owner of either bank of a river is entitled to keep a ferry, but "all ferry keepers are required to procure a license and execute a bond." The court refused an injunction, saying with reference to the defendant:

"It would be an idle exercise of the injunctive power by the court to restrain him in this case, when, as owner of one bank of the river, he may apply to the county court and obtain a license or order establishing his ferry, thus legalizing it, at next term of that court."

Levisay v. Delp, supra, was no doubt correctly decided on the facts appearing in that case, inasmuch as the defendant there could have procured his license as a matter of right almost by the time the injunction sought would have become effective. The injunction would have accomplished little or nothing.

The injunction cannot be refused in this case on such a ground.

An injunction may accomplish much here. The city of Memphis may decline to authorize the operation on its streets of jitney cars at all. At any rate, an injunction restraining the operation of such cars until the statutory bond is executed will eliminate all irresponsible owners.

In so far as Levisay v. Delp intimates that an injunction may not issue to protect a franchise, unless that franchise be exclusive of the right of the state to confer on others a like franchise, we are unwilling to adhere to it. We think these remarks of the learned judge delivering the opinion were *obiter,* and not fully considered, and they are in conflict with the great weight of authority, as we have heretofore shown. We therefore must confine the authority of the case of Levisay v. Delp, supra, to its own facts.

[5] We are of opinion, moreover, that complainant is entitled to the injunction sought on another ground. As we have stated, the operation of jitneys on the streets of any incorporated city or town in Tennessee without municipal permission, when the owners have executed no bond, is absolutely unlawful. Such operation is in defiance of the statute of this state and amounts to a public nuisance.

"Any unauthorized obstruction of a public highway is a nuisance." 37 Cyc. 247.

"Any unauthorized obstruction which unnecessarily impedes or incommodes the lawful use of a highway is a public nuisance at common law." Elliott, Roads & Streets, § 644.

"All unauthorized and illegal obstructions which prevent or interfere with the free use of the street or highway as such is within the legal notion of a nuisance." McQuillin, Mun. Corp. § 925.

"An obstruction may be a nuisance, although it is not of a permanent character." Elliott, Roads & Streets, § 648 (giving many illustrations).

Under the authorities quoted there can be no doubt but that the illegal operation of the swarm of jitneys described in the bill, run by irresponsible owners, racing with the street cars for patronage, and otherwise imperiling the safety of the public, in violation of law, constitutes a nuisance. The law is well settled that a public nuisance may be enjoined by a private individual,

provided the latter shows special damage to himself resulting therefrom. Weakley v. Page, 102 Tenn. 179, 46 L.R.A. 552, 53 S. W. 551; Richi v. Chattanooga Brewing Co. 105 Tenn. 651, 58 S. W. 646; Weidner v. Friedman, 126 Tenn. 677, 42 L.R.A.(N.S.) 1041, 151 S. W. 56; 37 Cyc. 253; High, Inj. §§ 816 et seq.

A frequent application of this rule is in favor of persons specially injured by nuisance on a public highway.

In Richi v. Chattanooga Brewing Co. 105 Tenn. 651, 58 S. W. 646, it was held that an abutting owner was entitled to enjoin an unauthorized construction and operation by a private corporation for its own use of a private railroad along the street, which destroyed the ingress and egress of such owner to and from his premises.

Such a right of injunction is conceded to abutting owners in almost every jurisdiction, when they show special damages by reason of the obstruction of the highway. High, Inj. § 816. See cases collected in a note to Sloss-Sheffield Steel & I. Co. v. Johnson, 147 Ala. 384, 8 L.R.A.(N.S.) 226, 119 Am. St. Rep. 89, 41 So. 907, as reported in 11 Ann. Cas. 285.

It is not necessary that the relief should be sought by an abutting owner, for it has been said that the character of the injury is not determined by the location of the property. The mere fact that an individual's property is at some distance from the obstruction does not determine whether or not his damage is special. Eldert v. Long Island Electric R. Co. 28 App. Div. 451, 51 N. Y. Supp. 186.

A neighboring landowner has been held to be entitled to enjoin the accumulation of an unlawful quantity of nitroglycerin on defendant's premises, where the complainant's property was so located that he might be specially damaged by an explosion. People's Gas Co. v. Tyner, 131 Ind. 277, 16 L.R.A. 443, 31 Am. St. Rep. 433, 31 N. E. 59, 17 Mor. Min. Rep. 481.

The owner of a licensed ferry has been granted an injunction against the obstruction of a public road leading to his ferry. The court said:

"The obstruction of the public road leading to the plaintiff's ferry was a public nuisance and an injury to him specially; and

his right to an injunction against the continuance of such nuisance is unquestionable." Draper v. Mackey, 35 Ark. 497.

An injunction has also been awarded against the obstruction of a road leading to a toll bridge, at the suit of the owner of the bridge. The court was of opinion that such an obstruction, which would divert travel from the road and cause a loss of tolls to plaintiff, went to the substance and value of plaintiff's estate as the owner of a franchise to operate the bridge. Keystone Bridge Co. v. Summers, 13 W. Va. 476.

So, without multiplying authorities, we conclude that on the ground last stated, as well as the former, the complainant in this case is entitled to an injunction. There can be no question but that the operation of the jitneys in the manner described in the bill, in contempt and disregard of the law of Tennessee, constitutes a public nuisance on the streets of Memphis. There is not the slightest doubt but that the complainant suffers special damage by reason of such nuisance. Complainant's loss of revenue by reason of the illegal competition amounts, it is alleged, to several hundred dollars each day. This damage is distinct and peculiar to complainant, and is an injury, to borrow the phrase of the West Virginia court, in the very substance and value of its estate.

The decree of the chancellor will be reversed. Within thirty days from this date an injunction will issue as prayed by the complainant. In the interest of the people of Memphis, who may be discommoded otherwise by the sudden removal of this means of transportation, we have thought it best to suspend the awarding of the injunction for a brief time, to permit the city of Memphis, should it so desire, to pass an enabling ordinance for the jitney owners, and to give to the latter an opportunity to comply with the terms of said ordinance and the statute of Tennessee.

TEXAS COURT OF CRIMINAL APPEALS.

EX PARTE SULLIVAN.

[No. 3506.]

(— Tex. Crim. Rep. —, 178 S. W. 537.)

Automobiles — Jitneys — License fee — Occupation tax.

1. A license fee of $10 per annum for a 5-passenger jitney requiring

constant police surveillance, exacted under an ordinance enacted under express charter authority which does not authorize the levying of an occupation tax, is not an occupation tax and is not unreasonable in amount, although a license receipt is headed "City Occupation Tax," where the receipt was issued under a different automobile ordinance on an old blank showing on its face that it was the form used in issuing a liquor tax license.

Automobiles — Jitneys — License ordinance — Who may question validity.

2. An operator of a jitney cannot be heard to complain that a license fee varying from $10 to $30 according to the number of passengers carried in a car is an occupation tax as to the larger fees, where he is in the $10 class, and it does not appear that any jitney within a higher class has ever applied for a license.

Automobiles — Jitneys — Operation under public automobile license.

3. A license to operate a public automobile under an ordinance perscribing regulations prior to the advent of jitneys does not authorize the operation of a jitney under a subsequent ordinance prescribing more stringent regulations for such vehicles and charging a greater license fee, especially where the latter ordinance provides for a refund on the surrender on the unexpired portion of the prior license.

Automobiles — Jitneys — Ordinance — Indemnity insurance.

4. Under a charter giving a city control of its streets, with power to regulate the use thereof by vehicles carrying passengers for hire, and charging it with the duty to enforce its police power to protect the life and property of its inhabitants, it has power to pass an ordinance requiring an operator of a jitney to procure a contract from some insurance corporation indemnifying his liability for injury to persons other than passengers and to property, where a large number of accidents have occurred from the operation of jitneys.

Constitutional law — Jitneys — Class legislation.

5. An ordinance does not unjustly discriminate against an operator of a jitney in requiring him to procure a contract from some insurance corporation indemnifying his liability for accidents, while street car companies and the drivers of ordinary hacks and automobiles are not required to procure such insurance.

Automobiles — Jitneys — Indemnity insurance — Corporation or person.

6. An ordinance requiring an operator of a jitney to procure a contract from some insurance corporation indemnifying his liability for accidents is not unreasonable or oppressive in not permitting him to procure a contract from a person, where it does not appear that there is only one corporation that will issue such a contract, and where the city has had unsatisfactory experience with personal surety bonds.

Automobiles — Jitneys — Operation off of selected route.

7. An ordinance is not unreasonable in prohibiting the operation of a jitney off of, or away from, a selected route and termini, where the operator makes the selection and may apply to the city for a change in the route or termini at any time.

Automobiles — Jitneys — Number of hours of operation daily.

8. An ordinance is not unreasonable in requiring the operation of a jitney for not less than twelve consecutive hours out of twenty-four, where it is customary for jitneys to operate on an average of fifteen hours a day, and the ordinance excepts Sundays, a reasonable time for meals, and time in case of accidents, breakdowns, or other casualties.

Automobiles — Jitneys — License ordinance — Who may question validity.

9. An operator cannot attack the provisions of an ordinance that an application for a license to operate a jitney over a particular route may be granted as applied for, or in a modified form, or be refused under certain conditions, where he has made no application for a license.

Automobiles — Jitneys — Restricting number operating on street — Monopoly.

10. A license ordinance permitting the refusal of an application for a license to operate a jitney over a particular route is not unlawful or unreasonable, or obnoxious to constitutional or statutory provisions against monopolies, where it would be dangerous or hazardous to public safety if there was no limitation to the number of jitneys operating on a street.

(Davidson, J., dissenting.)

[May 5, 1915.]

APPLICATION by I. W. Sullivan for a writ of habeas corpus and discharge thereunder from custody under a conviction for a violation of an ordinance regulating jitneys; denied.

Appearances: C. E. Farmer and H. D. Payne for appellant; H. C. McCart, Corp. Counsel, of Ft. Worth, for city of Ft. Worth; Marshall Spoonts, Co. Atty., C. R. Bowlin, and S. L. Samuels, and C. C. McDonald, Asst. Atty. Gen., for the State.

Prendergast, P. J., delivered the opinion of the court:

This is an application by Mr. Sullivan for a writ of habeas corpus and discharge thereunder.

He shows that he was convicted in the corporation (city) court of Ft. Worth on a complaint charging that he violated ordinance No. 448 of said city regulating motor busses, commonly, and for convenience herein, called "jitneys," hereinafter copied, in that: (1) He failed to pay the license fee of $10 required for operating said vehicle before doing so, and also; (2) that he so operated it without first procuring an indemnity contract from some solvent insurance company; that he was fined $10 in the corporation court; that he appealed therefrom to the county court where he was again fined $10, from which no appeals lies. He was held in

custody by the sheriff, under a proper commitment under said conviction. He attacks said ordinance as unconstitutional and void for many reasons. The application is before us on agreed facts. In order to properly discuss the material questions, it will be necessary to state, more or less, the charter provisions of the city, the ordinance attacked, and others bearing on the subject, and the agreed facts.

The charter of the city of Ft. Worth is a special act of the legislature, approved and in effect March 10, 1909 (Special Laws, p. 227), and was incorporated as a city of more than 10,000 inhabitants, with the commission form of government. It was stated and agreed orally, when the case was submitted, that the city now has a population of about 100,000. The act prescribes it shall be taken and held a public law, and requires that all courts shall take judicial knowledge of the contents and provisions thereof. Page 287. The charter says: The governing body of the city shall consist of a board of commissioners, composed of a mayor and five commissioners. Among others, are these charter provisions:

"The Board of Commissioners of said city shall be vested with the power and charged with the duty of making all laws or ordinances not inconsistent with the Constitution of the state, touching every object, matter, and subject within the local government instituted by this act." Page 238.

"The Board of Commissioners shall have the power to pass, amend, or repeal all ordinances, rules, and police regulations not contrary to the laws and Constitution of this state, for the good government, peace, and order of the city and the trade and commerce thereof, that may be necessary or proper to carry into effect the powers vested by this charter in the corporation, the city government or any department or officer thereof; to enforce the observance of all such rules, ordinances, and police regulations, and to punish violations thereof by fines, penalties, and costs; but no fine or penalty shall exceed two hundred dollars ($200)." Page 281.

"Said city of Ft. Worth shall have the power: . . . To enact and enforce ordinances necessary to protect health, life, and property, and to prevent and summarily abate and remove nuisances of all kinds and descriptions, and to preserve and enforce

the good government, order, and security of said city and of its inhabitants, and have and enjoy general police powers of a city; and the enumeration of other powers elsewhere herein and the specifications of same shall not be regarded as limitations upon the general powers herein conferred upon the city by this section." Page 276.

"The Board of Commissioners shall have power to lay out, establish, open, alter, widen, lower, extend, grade, narrow, care for, pave, supervise, maintain and improve streets, alleys, sidewalks, squares, parks, public places, and bridges, shall have the exclusive power and control over the same, and shall have the power to vacate and close the same; . . . and to prevent the encumbrance thereof in any manner, and to protect the same from any encroachment or injury, . . . and to abate and punish any obstructions and encroachments thereof. . . . To prevent the encumbering of the streets, alleys, sidewalks, and the public grounds with carriages, wagons, carts, hacks, buggies, or any vehicle whatever." Pages 246, 247.

Section 2, chap. 4, p. 248, provides the Commissioners shall have power, by ordinance or otherwise, to regulate, within the city, the speed of locomotives, trains, street cars, vehicles, and animals; to require street, electric, and steam railway companies to maintain, in good repair, and properly drain that part of the area of the streets occupied by them, and to construct and keep in good repair bridges, crossings, and culverts over and upon all drains or ditches on streets occupied by them; to require such companies to grade and pave and keep in good repair, with the same material with which the remainder of the street is paved, the width of their tracks and between them, their switches and turnouts, and a reasonable distance outside and next to the rails of said tracks, not to exceed 18 inches. Section 8, p. 276, provides:

"The Board of Commissioners shall have power by an assessment of taxes for said purpose or otherwise, to require any street or electric railway company . . . to bear its reasonable share of the expenses of sprinkling or sweeping such portions of any street or alley as are traversed by its lines. The Board of Commissioners shall have power to compel all street railway companies to supply ample accommodations for the safe and convenient travel of the people on the streets where their tracks may run

in the vicinity thereof, and to compel said railway companies to furnish ample, safe, comfortable, and convenient cars for transportation of passengers, and to make such other regulations as may by them be deemed necessary for the safety, convenience, and health of the public in the running of street cars."

Section 15, chap. 9, p. 279, gives the city power and authority:

"To provide for license fees, police tax, and surveillance, and generally to regulate hackmen, draymen, omnibus drivers, baggage wagon drivers, and drivers and owners of vehicles of every kind following a public vocation or lending their vehicles for such purpose, and all others pursuing like occupations, with or without vehicles and to prescribe their compensation, and to make it a misdemeanor for any person to attempt to defraud them of any legal charge for services rendered, and to provide and regulate public stands for vehicles and to prohibit the standing of such vehicles or horses at other than such places, and to regulate and provide a police tax, and to license and restrain runners and drummers for railroad vehicles of any kind to hotels, public houses, or any other places whether of like or unlike kind.

Section 19, p. 258, gives the city power to levy one half what the state does on every occupation, etc., and provides: "That nothing herein shall be construed to prevent the city, in the use of its police power, from prescribing license fees or police tax necessary and proper to enable the city to exercise proper police surveillance over all persons, firms, or corporations or calling subject to same."

Under proper power, authority, and duty, in 1908, the city duly passed ordinance No. 65. Its caption in a general way states its objects. It is:

"An Ordinance Providing for the Licensing of Carriages, Hacks, Omnibusses, Automobiles, and Other like Public Vehicles Operated for Hire within the City of Fort Worth, Prescribing the Rate of Charges That Shall Be Made by the Owners or Custodians thereof for the Transportation of Passengers, and Making It the Duty of the Person Conducting or Operating Such Vehicle to Keep the Said Rate of Charges Conspicuously Posted upon or about Such Vehicle, and Providing a Penalty to Charge or Collect Fares in Excess of Said Rate of Charges and Prescribing a Penalty against Any Person Who Shall Fraudulently Ob-

tain Conveyance on Such Vehicle and Jail or Refuse to Pay therefor.

This ordinance made no mention of street car companies and did not undertake to regulate street cars. On July 11, 1914, the city passed an ordinance, No. 421, and one week later passed another, No. 422, amending and substituting certain sections of 421, the two together, in effect, making one ordinance. The caption of that ordinance is:

"An Ordinance to Regulate the Use of the Public Streets and Highways of the City of Fort Worth by Horses, Mules, Street Cars, Vehicles of All Kinds and Pedestrians, Establishing Regulations as to the Transportation of Merchandise and Other Property over and upon Such Streets and Highways, and for the Movement, Stopping and Standing of Street Cars, Pedestrians, and Vehicles of All Kinds in the Streets, Highways, and Other Public Places, and Repealing All Ordinances and Parts of Ordinances in Conflict herewith and Fixing Penalties for the Violation hereof."

This ordinance is quite comprehensive, undertaking to regulate, and minutely regulating, the use of all such vehicles and persons operating them, and the streets by them, as was necessary and proper under the facts and conditions of things as they then existed in said city, specially naming automobiles as included therein. As we understand, none of the provisions of said ordinances 65 or 421, 422, are attacked by the applicant. On February 15, 1915, the city amended § 1 of said ordinance 65 so that that section was then made to read as follows:

"Section 1. That hereafter all persons operating carriages, hacks, omnibusses, automobiles, or other vehicles within the city of Fort Worth, for the purpose of carrying passengers for hire, shall first obtain a permit from the Board of City Commissioners in writing therefor, stating in such application the name, street address, age of the operator, period of experience of such operator in the operation of public vehicles, the character of business engaged in by such applicant, whether such person is addicted to the use of intoxicating liquors or the use of morphine, cocaine or opium or any other drug calculated to affect the physical strength or mind of the operator, and shall also state whether such applicant is deaf or partially deaf, or is nearsighted, or is laboring

under any other physical infirmity or afflicted with any disease of any kind, and that said application shall also state whether the said applicant has ever been convicted of any violation of the traffic ordinance of the city of Fort Worth, and shall also state the place of residence of the applicant for a period of at least five years prior to the date of making such application, and the character of business engaged in by such applicant.

"That if the Board of City Commissioners are satisfied with the application, they shall order the assessor and collector, of taxes to issue a permit to the person applying therefor, and such person shall be entitled to said permit or license for the period of twelve months upon paying to the assessor and collector of taxes the amount of three ($3.00) dollars for each carriage, hack, omnibus, automobile, or other vehicle used by him; provided, however, that said Board of City Commissioners shall in no event be compelled to order the issuance of any license within less than ten days after the presentation of the application therefor to said Board; provided, it shall not be lawful to operate, under the license hereinabove provided for, any motor bus, as the same is defined in ordinance No. 448, passed by the Board of City Commissioners of the city of Fort Worth on the 15th day of February, A. D. 1915."

While this is § 1 of ordinance 65, we understand that it was intended to apply and does apply, to all persons or drivers of all motor busses or "jitneys," as well as to all the other vehicles mentioned. We do not understand that the applicant in any way attacks said amended § 1. The other provisions of said ordinance 65 and of ordinances 421, 422, are numerous and quite lengthy. We deem it unnecessary to here quote any of them. They in no way require the street car companies to take out any license or insurance whatever to run and operate street cars; nor do they require the operators of any of the other vehicles to procure any insurance or indemnity as a prerequisite to operating any such vehicle. They are silent as to these matters.

Thus matters stood until the advent of the "jitneys," which occurred in January, 1915. Their advent and operation created a state of fact entirely different from what had existed theretofore. This necessitated, as the city deemed it, the passage of an ordinance to specially regulate them, which resulted in the passage

of ordinance 448 on February 15, 1915. We now copy the caption and said ordinance 448 and the agreed facts pertaining thereto:

"Ordinance 448. An Ordinance Defining a 'Motor Bus,'" providing that it shall be necessary to take out a special license for the operation of the same and the provisions under which a special license may be issued; regulating the running of motor busses within the city limits of the city of Ft. Worth; providing a penalty for the unlawful operation thereof, and declaring the unrestricted operation of said motor busses to be a nuisance and unlawful.

"Section 1. Unless it appears from the context that a different meaning is intended, the following words shall have the meaning attached to them by this section:

"(a) The word 'street' shall mean and include any street, alley, avenue, lane, public place, or highway, within the city limits of the city of Fort Worth.

"(b) The words 'motor bus' shall mean and include any automobile, automobile truck, or truckless motor vehicle engaged in the business of carrying passengers for hire within the city limits of the city of Ft. Worth, which is held out or announced by signs, voice, writing, device, or advertisement to operate or run, or which is intended to be operated or run, over a particular street or route or to any particular or designated point, or between particular points, or to or within any designated territory, district or zone.

"(c) The word 'person' shall include both singular and plural, and shall mean and embrace any person, firm, corporation, association, partnership or society.

"Sec. 2. No person shall run or operate or cause to be run or operated a motor bus within the city limits of the city of Ft. Worth without first obtaining a license therefor; and no license certificate shall be issued until and unless the person so desiring to operate such motor bus shall file with the city secretary of the city of Ft. Worth an application in writing for a license; which said application shall state:

"(a) The type of motor car to be used as such motor bus.

"(b) The horse power thereof.

"(c) The factory number thereof.

"(d) The county license number thereof.

"(e) The seating capacity thereof, according to its trade rating. If the motor car has been adopted for use as a bus, either by converting a freight carrying truck into a passenger carrying vehicle, or by reconstruction modifying or adding to the body or seating arrangements of a passenger carrying motor car, a statement of its seating capacity shall be added.

"(f) The name and age of each of the persons to be in immediate charge thereof as driver.

"(g) The termini between which each motor bus is to be operated and the street or streets over which such motor bus is to be run, both going and returning.

"The city secretary of Ft. Worth shall refer such application to the Board of City Commissioners of the city of Ft. Worth, at its next regular meeting, occurring not less than thirty-six hours after such filing, together with the recommendations thereon. The Commission may grant such application for license as filed, or grant the same in modified form, or if any such person designated in subdivision (f) of this section be not qualified as to age, experience, or otherwise, to be in the opinion of the Commissioners an unfit person to operate such motor bus, or if the motor car described in the operation of the particular motor bus or motor busses over the route designated by reason of existing traffic conditions would be dangerous or hazardous to public safety, or if said application be not in compliance with the provisions of this ordinance, the Board of Commissioners may refuse same.

"Upon the granting of such application as filed or modified, and the payment of the required license fee, and the filing with him of the indemnity contract herein provided for, properly approved by the Commissioner of Fire and Police, the city assessor and collector shall issue a certificate of license to operate, or cause to be operated the motor bus described, between the termini stated, and between no other termini, provided that the termini stated in such certificate may thereafter be altered by order of the Board of City Commissioners of the City of Ft. Worth in its discretion, upon the application of the person holding such license, for which change a fee of 50 cents shall be charged and collected.

"Sec. 3. The license fees herein provided for are fixed as follows:

"For each motor bus with a seating capacity of five (5) or less persons, including the driver, $10 per year; for each motor bus with a seating capacity of seven (7) or less but more than five (5) persons, including the driver, $20 per year; for each motor bus capable of seating more than seven (7) persons, including the driver, $30 per year.

"Sec. 4. The license herein provided for shall be good and in force and effect only for the calendar year in which same are issued. If a license be issued covering a period of less than one-half calender year then the fee for same shall be only half the fee provided herein. License for succeeding years shall be procured and license fees paid before expiration of current year, but the owners of all auto busses now being operated shall have ten days after the taking effect of the ordinance to procure license and indemnity contract as hereinafter provided, and to comply with the further provisions of this ordinance.

"Sec. 5. It shall be unlawful.

"(a) To drive or operate or cause to be driven or operated any motor bus upon or along any street unless there is in force and effect a valid license as prescribed in this ordinance for the operation of such motor bus.

"(b) To stop any motor bus, or to permit such motor bus to remain standing upon any street for the purpose of loading or unloading passengers, except same be brought as near as possible to the right-hand curb of said street.

"(c) To drive or operate motor bus without the city license number thereof displayed in figures not less than 3 inches in height permanently painted or attached to the body or appurtenances of the body on both the front and rear of said motor bus, and on the rear painted the word 'bus.'

"(d) To drive or operate any motor bus without having permanently displayed upon same and permanently attached to same a sign or painting showing both the destination and the route of same in accordance with the provisions of the license covering same.

"(e) To drive or operate any motor bus while any person is standing or sitting upon any running board or fender thereof, or while any person is riding on such motor bus outside the body thereof. It shall also be unlawful for any person to stand or sit

upon any fender or running board of any motor bus, or occupy any portion of such motor bus outside the body thereof while such motor bus is in operation; or for more than one passenger to ride in the front seat.

"(f) To drive or operate a motor bus upon any street in the city of Ft. Worth unless and until the owner thereof or the person in whose name the license or permit is sought or issued shall have procured and deposited with the city assessor and collector of the city of Ft. Worth, with receipt showing premium on same to have been paid, a liability contract written by some solvent insurance corporation incorporated under the laws of the state of Texas, or with permit to do business in this state, agreeing to indemnify the legal liability of said owner or licensee of said motor bus on account of personal injury, in the sum of five thousand dollars ($5,000) to any one person, other than a passenger on said motor bus, and ten thousand ($10,000) dollars for any single accident where more than one person, other than a passenger on said motor bus, is injured or killed, and one thousand ($1,000) dollars on account of property damage to anyone other than a passenger on said motor bus, accruing on account of the operation of said motor bus in any street of the city of Ft. Worth. And in the event said policy of insurance should for any reason be canceled or retired, it shall be unlawful to continue the operation of said motor bus until another such bond shall have been procured and deposited with the city assessor and collector as aforesaid. Before filing of any such insurance contract it shall first be presented to and approved by the Board of City Commissioners of the City of Ft. Worth.

"(g) To fail, refuse, or neglect to operate a motor bus between the termini designated in the license for a period of not less than twelve consecutive hours out of every twenty-four (24) hours, except on Sundays, and a reasonable time for going to and from meals, and in case of accidents, breakdowns, or other casualties, or upon the surrender of said license; or to operate, or permit to be operated, any motor bus off of, or away from, the route stated and fixed in the license for the operation of such bus, except in case of emergency.

"(h) To race with any other auto bus or drive rapidly to pass

one in order to be first to any prospective passenger or to anyone waiting for motor bus or other conveyance.

"(i) To operate any motor bus at a greater rate of speed than 12 miles per hour in the business section of the city of Ft. Worth or 18 miles per hour in the residence section thereof.

"(j) To reconstruct, materially alter, modify, or add to the body or seating arrangements of any motor bus, after the license thereof is issued without first applying for and receiving the consent of the Commission.

"(k) To run any motor bus, with the top up, between sundown and sunup, unless the same is equipped with a light or lights which shall be kept burning so as to well light both the front and rear seats of said bus.

"Sec. 6. In the operation and driving of any motor bus, the same shall be stopped for the loading and discharging of passengers only at the near side of the streets intersecting the street on which the motor bus is being operated, and only on the right-hand side of the street, on which the motor bus is being operated. Said motor bus shall not be stopped in such position as would interfere with the use of the crosswalks crossing such streets, or as to interfere with or access to or from other conveyances in such street.

"Sec. 7. Any person who shall violate any provision of this ordinance shall be guilty of misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars.

"Sec. 8. In case of the conviction of the owner or operator of any motor bus, of the violation of the terms of this ordinance, it shall be the duty of the Commissioner of Fire and Police to report such conviction to the Board of City Commissioners, together with his recommendation. The Commission shall consider and act upon said recommendation, and may revoke, suspend, or continue in force such license as it may deem proper.

"Sec. 9. Any person holding a license to operate a public automobile in the city of Ft. Worth at the time this ordinance takes effect may surrender the same and shall thereupon be entitled to credit for the value of the unexpired portion thereof, prorated according to the time, in payment of a license fee hereunder. Any person operating a motor bus, as defined herein prior to the introduction of this ordinance, under a public automobile license,

who shall file an affidavit stating that he has elected to retire from such business because of the adoption of this ordinance, shall be entitled to a refund of the value of his unexpired license prorated according to time; provided, that said affidavit shall be made within fifteen (15) days after this ordinance goes into effect.

"Sec. 10. The holding or adjudication of any section or subdivision of any section of this ordinance to be invalid shall not effect the validity of any other section or subdivision of a section, but all other sections and subdivisions of sections shall be and remain in full force and effect.

"Sec. 11. The operation of any motor bus otherwise than as provided in this ordinance is hereby declared a nuisance and menace to public safety, and unlawful.

"Sec. 12. Each and every day's violation of this ordinance shall constitute a separate offense.

"Sec. 13. All ordinances and parts of ordinances in conflict with this ordinance shall be, and the same are hereby repealed, in so far as in conflict and no further."

"Sec. 15. This ordinance shall be in force and effect, except as herein otherwise provided from and after its passage and publication."

Said agreed facts are as follows:

"(21) It is agreed that there is a street car system in the city of Ft. Worth which carries passengers for a fare of 5 cents, which system is operated under a franchise from the city of Ft. Worth, and said street car system or corporation is not required by ordinance to take out a license for the operation of their cars, and operate their cars over various streets, taking a car from one route to another, at will, changing the sign thereon, but in so doing do not abandon service on any route from which such car is shifted, but keep sufficient cars on such route for the accommodation of the traffic, and run from 5:30 A. M. to 12:40 A. M. continuously each day, including Sundays.

"(22) It is agreed that vehicles under ordinance No. 449 have the use of all streets, have designated stands, and run only on special calls, and are not held out as running over any particular route, and charge a higher rate of fare than the motor bus."

"(24) It is agreed that the copy of the bond, hereto attached and marked 'exhibit E,' is a substantial copy of some bonds ap-

proved by the city officials; that while the officials have approved the above form of bond, the city does not require any other conditions of the bond than those stated in ordinance No. 448.

"(25) That the premium charged by the insurance companies for the required bond is $60, covering a period of one year.

"(26) It is agreed that there are now licensed and in operation, practically 300 automobiles or motor busses running and operating over the streets of the city of Ft. Worth, and hauling passengers to and from different points for a fare of 5 cents, and are generally known as jitneys or motor busses; that of this 300 jitneys or motor busses some 25 or 30 have complied with ordinance No. 448, which ordinance seeks to regulate the running and operation of said motor vehicles; that the above referred to cars carry signs thereon in conspicuous places advertising to the public that they run over a particular street or particular streets or to and from particular points within the limits of the city of Ft. Worth; that these 300 cars come in and out of the business section of the city of Ft. Worth on each round trip that they make, and each car makes a round trip on an average of each 30 minutes; that in going into the business section of the city these cars all traverse Main or Houston street, the two principal business streets of the city; that on these two streets, which extend between the courthouse and Texas & Pacific depot, are laid two street car tracks in each street; that when automobiles, wagons, or other conveyances are standing along the curb of these streets there only is left sufficient room for one conveyance to pass between the street car and such conveyances standing along the curb; that the running and operation of these jitneys or motor busses has greatly congested the traffic conditions upon said Main and Houston streets and other streets within the city of Ft. Worth; that the congestion occasioned by the operation of these jitneys or motor busses has necessitated the placing of additional traffic policemen at five different places, or street intersections,within the city of Ft. Worth; that in the past sixty or seventy-five days there has been approximately 100 individual accidents, in which these jitneys or motor busses have been concerned, and in which one or more persons have been injured, and some have lost their lives; that traffic conditions arising by reason of the operation of jitney and motor busses have necessitated, and will necessitate, the em-

ployment by the city of Ft. Worth of several additional motorcycle policemen for the purpose of patrolling the different streets of the city, enforcing an observance of the city regulations by these jitney or motor bus operators; that since the beginning of the operation of these jitney or motor busses and the passage of ordinance No. 448, it has become necessary for the city of Ft. Worth to create the office of permit clerk, and install therein a man for the purpose of issuing permits and keeping proper records thereof; that said permit clerk is paid a salary of $100 per month; that in addition to these expenses the city of Ft. Worth will have to procure proper stationery in issuing the permits, and proper ledgers and journals and account books, the expense of which cannot now be determined; that all extra policemen required by reason of the operation of these jitneys or motor busses and the traffic conditions arising therefrom will cost the city an average of $80 per month for each policeman hired; that said 300 jitneys or motor busses operate an average of fifteen hours each day, and average covering fifteen miles each hour, that all these cars are operated upon the paved streets only.

"(27) It is further agreed that the city of Ft. Worth in the taking and approval of different characters of bond, both in the municipal court and in contracts for public work and bonds in other matters, has had a great deal of trouble with personal bonds; that by reason of unsatisfactory experience with personal surety bonds the city has, for a number of years, been requiring surety company bonds, and for such reasons required surety company bond in ordinance 448; that the bond required by ordinance No. 448 has been made by some 20 or more operators of jitney or motor busses, and a license taken out by said jitney or motor bus cars and their route selected and designated as required by ordinance No. 448.

"(28) It is further agreed that the license receipt or certificate issued to relator herein and attached to the application for the writ of habeas corpus as an exhibit, and being headed at the top, 'Occupation Tax Receipt,' was issued by the city on old blanks which they had on hand, and that the receipts were not printed or prepared expressly for use under ordinance No. 448.

"(29) It is agreed that the Board of Commissioners of the city of Ft. Worth, in view of the traffic conditions hereinbefore refer-

red to, and the large number of accidents occurring from the operation of said jitneys, deemed that there was an imperative and urgent necessity for the passage and enactment of said ordinance 448.

"(30) It is agreed that under charter power the street railways of the city of Ft. Worth are required to keep their roadbeds in repair between the tracks and for 18 inches on the outside of either rail, and that they are required to pave the street between the rails and 18 inches on the outside of each rail, and that they are subject to be assessed for such paving, and the cost of same made a lien against the road-bed, franchise, etc., of the street railway company, and also a personal liability of the company, and that said street railway company comply with these requirements of the charter and Board of Commissioners at a continual and heavy cost; that there is no ordinance levying a regulation or license tax on the street cars operated by the street railway companies in the city of Ft. Worth in carrying passengers for hire on their said lines of railway in said city of Ft. Worth."

The agreed facts further show that the jitney operated by the applicant had a seating capacity of five persons, including the driver, and under § 3 of said ordinance 448, the amount of his license tax would be $10 per year; that he refused to take out any insurance policy and to pay the $10 license fee, and refused to select his route, and that he ran his jitney for five cents a passenger per trip on any street he desired, and Main street in particular; that he complied with ordinances 421, 422, and had paid $3 for the license tax and procured a license thereunder, which was issued to him on January 14, 1915, and was for one year from that date; that the facts proved on the applicant's trial in both the corporation and county courts showed, beyond question, that he had violated ordinance 448 as alleged in the complaint, if a valid ordinance.

As stated, the applicant attacks the ordinance under which he was convicted and is held, claiming that it is unconstitutional and void for many reasons. We think it unnecessary to take up *seriatim* each of his said grounds of attack. We will take up and discuss the material and vital ones, which will fully determine his rights in the premises.

There can be no doubt that the city, under the charter provi-

sions above given, not only had the power and authority to enact and enforce proper ordinances prescribing reasonable regulations on the subjects embraced in said ordinances, but that it was its imperative duty to do so. The agreed facts show that from the traffic conditions and large number of accidents from the operation of the jitneys, the Commissioners of the city—"deemed that there was an imperative and urgent necessity for the passage and enactment of said ordinance 448."

In fact, the applicant expressly concedes that under its charter power said city could pass and enforce all reasonable regulations. But he complains that said ordinance, in several particulars, is unreasonable, so much so as to render it void; that it is class legislation, etc. These we will now discuss.

The construction and validity of ordinances of our cities have many times been before, and considered by, this court. One of the most careful, thorough, and exhaustive opinions was rendered in Ex parte Gregory, 20 Tex. App. 210, 54 Am. Rep. 516. That decision has never been questioned or modified, but on the contrary, many times, and down to almost this day, cited and approved. Therein (page 217 of 20 Tex. App.) it is said:

"In the construction of ordinances, in considering the question of their validity, Mr. Dillon says: 'The courts will give them a reasonable construction, and will incline to sustain rather than to overthrow them, and especially is this so where the question depends upon their being reasonable or otherwise. Thus, if by one construction an ordinance will be valid, and by another void, the courts will, if possible, adopt the former.' 1 Dill. Mun. Corp. 3d ed. § 420. 'When the legislature has conferred full and exclusive jurisdiction on a municipal corporation over a certain subject, the acts of the corporation will be supported by every fair intendment and presumption.' Baltimore v. Clunet, 23 Md. 449. 'In view of the inartificial character of town by-laws, they are especially entitled to a reasonable construction.' Whitlock v. West, 26 Conn. 406. 'The strict rules by which the validity of penal statutes are to be tested are not to be applied to the by-laws or ordinances of municipal corporations. It has been well remarked that the by-laws of very few of these corporations could stand such a test. They should receive a reasonable construction, and their terms must not be strictly scrutinized for the purpose of making

them void.' First Municipality v. Cutting, 4 La. Ann. 335; Merriam v. New Orleans, 14 La. Ann. 318.

"It is provided in our statute that 'in all interpretations the court shall look diligently for the intention of the legislature, keeping in view at all times the old law, the evil, and the remedy.' Rev. Stat. art. 3138, subdiv. 6. And our Penal Code provides that 'every law upon the subject of crime shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects.' Penal Code, art. 9. It will be perceived from the provisions of our statute above quoted that they are in accord with the rules of construction applicable to ordinances. They contemplate a reasonable construction, that is, a construction which will give effect to the intention of the legislative power enacting the law, and in interpreting the law all reasonable intendments which help to sustain and make the law operative are to be indulged and weighed by the court."

It is further therein, in effect, held (page 218 of 20 Tex. App). It must be presumed that in framing and enacting the ordinance the Commissioners acted with a knowledge of the Constitution, the charter, and decisions, and intended to conform the ordinance to the requirements thereof, so as to make it a valid and effective ordinance. Such being the intention of those who framed and adopted the ordinance, that intention must be respected and considered in its interpretation, and every reasonable intendment must be indulged, in furtherance of the accomplishment of such intention.

The correct doctrine and, in fact, the universal doctrine in this country and in this state is as stated by Judge Henderson in Ex parte Vance, 42 Tex. Crim. Rep. 623, 62 S. W. 569:

"That the courts are not authorized to declare an ordinance unreasonable and void, unless its unreasonableness shall clearly appear. Ex parte Battis, 40 Tex. Crim. Rep. 112, 43 L.R.A. 863, 76 Am. St. Rep. 708, 48 S. W. 513; Thomp. Corp. § 1021; St. Louis v. Weber, 44 Mo. 547."

And as further stated by him in Ex parte Battis, 40 Tex. Crim. Rep. 115, 43 L.R.A. 863, 76 Am. St. Rep. 708, 48 S. W. 514:

"It it held, furthermore, that the courts will be liberal in up-

holding an ordinance, and if its reasonableness be doubtful, it will not be held void. Ex parte Gregory, supra."

Judge Dillon, in his work on Mun. Corp. vol. 1, § 591, says the presumption is that an ordinance is reasonable. Our supreme court, in Austin v. Austin City Cemetery Asso. 87 Tex. 338, 47 Am. St. Rep. 114, 28 S. W. 528, also says that the presumption is that an ordinance is valid. Judge Dillon further says:

"The person attacking it must assume the burden of affirmatively showing that as applied to him it is unreasonable, unfair, and oppressive."

Our supreme court in said case, supra, says the same thing. These principles are so well settled and of such universal application by all the courts, it is unnecessary to collate the other authorities.

[1, 2] The applicant attacks those provisions of ordinance 448, requiring the prepayment of a license fee of $10 per annum as applied to him, claiming that it is an occupation tax, and not in truth and in fact a license fee. Of course, if it was in reality an occupation tax, it would be illegal and void because said city had no power or authority to prescribe any such occupation tax. We think the agreed facts herein exclude the idea that said amount is levied as an occupation tax, but, on the contrary, establishes clearly that it was what it purports to be, a license fee only. The charter expressly authorized the city to levy such a license fee. The ordinance purports to do that only, and not to levy any occupation tax. The fact that the applicant on January 14, 1915, procured a license receipt, which is headed "City Occupation Tax," is relied upon by him to show, or tend to show, that the said license fee fixed by said ordinance is an occupation tax. That receipt is no evidence on the point, because it was issued under a different ordinance, and a month before ordinance 448 was ever passed. Besides, the agreed facts show that that receipt was issued on old blanks which the city had on hand at that time, and that since said ordinance 448 was passed, it had not prepared or printed such receipts for use under that ordinance. The said receipt further on its face shows that it was the form of blank used by the city in issuing occupation tax license for pursuing the liquor business.

The question of whether a license fee or tax is in reality not that, but an occupation tax, has been before the courts of this state, and this court, so often and the distinguishing features discussed so fully that it seems useless to again discuss it.

That the ordinance fixes $20 per annum as the license fee for a jitney of seating capacity of over five, and not exceeding seven, passengers, and $30 per annum for over seven, has nothing whatever to do with this case. It does not, in any way, injuriously affect the applicant. He shows he comes within the $10 class only. There is no showing whatever that any jitney within either of the $20 or $30 classes has ever applied, or ever will apply, for a license. It will not do for courts to go out of their way to decide speculative questions, which do not, and cannot, affect the rights of the party and case before them. To do so would be to render *obiter dicta* decisions of the rankest kind. 8 Cyc. 787–789.

The ordinance held valid in the Gregory Case, supra, fixed the license fee at from $2.50 to $12 per annum on the various vehicles. The fee complained of specially in that case was $8 per annum on the old hack. This record expressly shows that the jitney now uses the streets constantly 15 hours each day, making round trips each 30 minutes, at 15 miles average speed per hour, and requires the constant and extra surveillance of the city through its police department, thus requiring infinitely more attention and expense of the city than could possibly have been the case in Galveston in 1886 of the old hack.

The ordinance held valid by this court in Ex parte Denny, 59 Tex. Crim. Rep. 580, 129 S. W. 1115, fixed the license fee at from $5 per annum on the one-horse wagon, cart, or dray to $10 on each automobile and four-wheeled two-horse vehicle. In that ordinance no vehicle constantly run over the streets, but instead, when not actually engaged in hauling, or going for, a load, each was required to stay at a stand designated by the chief of police. The opinion does not give all these facts, but the record therein, which we have examined, does. The rule established by all the authorities on this subject is that the fact that the license fee "results in producing revenue, which may be paid into the treasury for the use of a particular fund, or as a part of the general fund, does not deprive the assessment of the character of a

police regulation" (Brown v. Galveston, 97 Tex. 17, 75 S. W. 496), that it "is not to be confined to the expense of issuing it, but that a reasonable compensation may be charged for the additional expense of municipal supervision over the particular business. . . . In fixing upon the fee it is proper and reasonable to take into account, not the expense merely of direct regulation, but all the incidental consequences that may be likely to subject the public to cost in consequence of the business licensed. In some cases the incidental consequences are much the most important, and indeed are what are principally had in view when the fee is decided upon. . . . And all reasonable intendments must favor the fairness and justice of the fee thus fixed; it will not be held excessive unless it is manifestly something more than a fee for regulation." Ex parte Gregory, 20 Tex. App. 222, 223, 54 Am. Rep. 516, supra, and authorities therein cited; Cooley, Taxn. pp. 408–410; Ex parte Denny, supra; Ex parte Cramer, 62 Tex. Crim. Rep. 11, 36 L.R.A. (N.S.) 78, 136 S. W. 61, Ann. Cas. 1913C, 588, and authorities therein cited; Ex parte Wade, — Tex. Crim. Rep. —, 146 S. W. 179.

We think the $10 license fee fixed and applicable to applicant, as established by the agreed facts herein and the law, is unquestionably not an occupation tax, but a mere license fee, and is not unreasonable.

[3] Incidental to this question, it seems, the applicant contends that his said license receipt entitles him to run his jitney under said ordinance 448. This license, as shown on its face, was a receipt to him for $3, and authorized him to pursue the occupation of "1 auto, for hire, No. 5119, at No. 2409 Clinton street," within the limits of said city, for the period of one year from January 14, 1915. As stated, that receipt or license was issued to him under the said ordinances previous to the passage of 448, and applied to an entirely different state of facts from that provided for and prescribed in 448. It was a mere license under those previous ordinances. He, however, was not operating his jitney under ordinance, but the facts show that he was operating it as forbidden under ordinance 448. If he had continued to operate under the previous ordinance, well and good, but he could not use that license to operate altogether differently under

another ordinance. Besides, § 9 of ordinance 448 provides most equitably for the surrender of that license. For the unexpired portion thereof he is given a credit on the license fee prescribed in said ordinance 448 if he wants to change so as to operate thereunder; or, if he did not want to continue business under the old ordinance, he could surrender that license, and the proper *pro rata* refund would be made to him.

[4] Another contention by the applicant is that said city had no power or authority to require him to procure, pay the premium upon, and deliver to the city an insurance policy or indemnity contract, as described in said ordinance 448, and to require the operators of "jitneys" to do this, when it does not require the other carriers of passengers within said city to do so, is an unlawful discrimination against him. Even if the requiring of such indemnity or insurance is a new feature in the regulation of the carriers in our cities, that is not any presumption that it is not a proper, reasonable, or valid regulation as conditions now exist.

We find that the ordinance of Galveston held valid in the Gregory Case, supra, required bond to be given in addition to the license tax to be paid in advance. The amount and conditions of the bond are not stated in the opinion, and the papers are not accessible to us now. Also the ordinance of Dallas passed upon in Hirshfield v. Dallas, 29 Tex. App. 242, 15 S. W. 124, in addition to requiring the prepayment of a license fee, required a bond for $1,000—"conditioned against losses to purchasers on account of tickets sold, and giving said purchaser the right to sue on said bond to recover damages in the premises."

Although both these ordinances were vigorously assailed, neither was on the ground they required bond.

The charter expressly gives the city of Ft. Worth the exclusive power and control over its streets, and to, in any and every reasonable way, regulate the use thereof by all character of vehicles carrying passengers for hire, and others. This in addition to the most ample and full express police power to pass and enforce all ordinances for the good government, peace, and order of the city and trade and commerce thereof, and to protect the health, life, and property of the city and "its inhabitants," but it is expressly "charged with the duty" of doing so.

The record makes it clear that prior to the advent of the jitney and exclusive of the steam railroad and interurban (which are not under consideration), there had for a long time existed in the city two classes of carriers of passengers for hire, to wit: (1) The street car company; and (2) the old hack or carriage and automobile. There is no necessity for discussing the character of the street car and its operation. It is known that it could not operate on any street without first securing a franchise to do so from the city, and that is shown to have been done here. The street car can run only on the iron rails laid and maintained by it at its own expense. They, of course, cannot run elsewhere. As one of the burdens of its franchise and right to operate its cars, the city compels it to maintain, keep in good repair, and properly drain, all that part of the streets occupied by it at its own expense, and to construct and keep in good repair the bridges, crossings, and culverts over and upon all drains, or ditches, on the streets occupied by it, to grade and pave and keep in good repair with the same material with which the remainder of the street is paved the width of all of its tracks in such street and 18 inches additional on the outside of its rails, and that this is all done at a continual and heavy cost to the street car company. That all other vehicles carrying passengers for hire, other than the jitney can use and have used any or all of the streets, but they have designated stands and run only on special calls, and are not held out as running over any particular route, and charge a higher rate of fare than the jitney, and that this condition of things had existed for years; that the jitney is a class unto itself; that they sprang up and began operations almost in a day in January; that when ordinance 448 was passed there were 300 of them operating in the city; that they carry signs in conspicuous places, advertising to the public that they run over a particular street or streets to and from given points; that they come in and out of the business section of the city on each round trip, each car, jitney, making a round trip on an average of every 30 minutes, and run at a rate of speed averaging 15 miles each hour, and operate an average of 15 hours each day; that in going into the business section they all traverse Main or Houston street, the two principal business streets of the city, which extend from the courthouse to the Texas & Pacific depot; that they operate

only on paved streets; that on said two main business streets, two street car tracks in each is laid; that when automobiles, wagons, or other conveyances are standing along the curbs of these streets, there is left only sufficient room for one conveyance to pass between the street car and such conveyance; that the running and operation of these jitneys has greatly congested the traffic conditions upon said main business streets; that in 60 or 75 days during their operation approximately 100 individual accidents have occurred in which the jitneys have been concerned and in which one or more persons have been injured and some have lost their lives; that their operations have already necessitated five additional traffic policemen at street crossings, and will necessitate the employment of several additional motorcycle policemen for the purpose of patrolling the different streets and enforcing an observance of the regulations by these jitneys.

It will be seen by all of this, and the whole agreed facts, that the operation of the jitney has brought about a condition of things in said city that has never before existed and had not before been even contemplated. No such condition of things, or anything even approximating it, is shown to have existed in Ft. Worth prior to the advent of the jitney, or occasioned by anything else than the jitney. It is apparent that in the operation of the street cars and all other vehicles in Ft. Worth prior to the advent of the jitney their operation had never called for, nor required the city, in the protection of itself or its inhabitants, as a proper regulation of such carriers to require them, or any of them, to give any indemnity bond, as is now required of the jitneys.

Let us see what the indemnity policy or insurance is which the city requires of the jitney operator. It is, as the ordinance shows, in substance, a policy by some solvent insurance corporation incorporated under the laws of this state, or some foreign corporation with permit to do business in this state, indemnifying the jitney man in the total sum of $10,000 for any single accident where more than one person is injured or killed, $5,000 when only one person is injured or killed, and $1,000 damage done to the property of another. All these provisions for indemnity are where persons and their property other than the passengers of the jitney man are injured or killed. Neither the ordinance nor the policy make him liable for any damage. He would not be, unless

he was to blame in inflicting the injury. If injury is caused by his negligence or fault, there is no question but what he is liable in law to the injured person for such damage whatever the amount may be. This indemnity contract then inures fully to his own benefit. If he causes such damage he ought to pay it, or be made to pay it. If he is insolvent or irresponsible so that he cannot be made to respond, the more necessity there is for requiring him to provide for indemnity insurance so that the insurance company shall be required to pay it, or else prevent his operating a jitney. In all events, as stated, it inures to his benefit. If he causes such injury or damage, by having such indemnity insurance, he would be indemnified, and the company, and not he, would ultimately have it to pay.

It is the settled law of the state, and been so, since the rendition of the opinion of Judge Stayton in Galveston v. Posnainsky, 62 Tex. 118, page 128, 50 Am. Rep. 517, that when our municipal corporations are given such powers and authority by its charter as was given Ft. Worth by its charter, "the law imposes the duty of faithfully exercising them, and gives an action for misfeasance or neglect in this respect to any person who may be injured by such failure of duty."

And he further says that the weight of authority holding such municipal corporation—"is liable for an injury resulting from its neglect to keep its streets in repair is so overwhelming that we feel constrained to hold the law so to be, and that an action lies for such an injury without its being expressly given by statute." 62 Tex. pages 133, 134.

It is also well settled in our state that where such city expressly or impliedly authorizes or permits anyone to so use or misuse its streets as to negligently cause injury to another, not only is the party who thus causes injury liable, but the city is also liable.

In Taylor v. Dunn, 80 Tex. 652, 667, 668, 16 S. W. 732, 737, Taylor and his associates contracted with the state to build the present capitol building. It was necessary for them to have a railroad in some of the streets of Austin to haul the material to where the building was to be erected, and the city passed an ordinance authorizing them to construct and operate such railroad. Among other provisions, the ordinance required Taylor and associates to execute, and they did, a $10,000 bond to the city,

conditioned they would at their cost, within ninety days after the completion of the capitol, remove said railroad and all material thereof, and also all rubbish accumulated thereby. Other issues were in the case unnecessary to now mention, but, it seems, Taylor contended the city had no right to require said bond, and because thereof it was void. Chief Justice Stayton said:

"While a municipal corporation cannot legalize a nuisance, it has power to control the use of streets for a lawful purpose, and as it may become liable for the improper use or condition of streets while occupied by persons permitted to use them for a proper, but unusual, purpose which may be attended with inconvenience or even danger, it may require indemnity from such person, on which to rely in case cause of action results against it from such person's act or omission."

In McQuillin on Mun. Ord. § 430, it is said:

"The proposition cannot be denied that organized government has the inherent right to protect health, life, and limb, . . . private property and legitimate use thereof, and provide generally for the safety and welfare of its people. Not only does the right exist, but this obligation is imposed upon those clothed with the sovereign power. This duty is sacred and cannot be evaded, shifted, or bartered away without violating a public trust."

Again, in § 433, he says:

"Crowded urban populations require numerous police regulations which would be unreasonable in rural districts or sparsely populated territory. This difference was quickly recognized, and from the first establishment of local corporations invested with civil government, the local community has been empowered to enact and enforce all sorts of such regulations which restrict, more or less, the liberty of the individual, his personal movements, and the use of his property. These are absolutely essential to life in crowded centers. From the beginning their necessity has been sanctioned by the public authorities, and they have been sustained generally by the courts."

It needs the opinion of no court or judge to make it true, for every one knows it is true, that an automobile jitney is a powerful and dangerous machine, and is especially dangerous, as usually operated in crowded streets. In running, it has no certain track, but is operated so as to dart about hither and thither. The

agreed facts show, as stated, that at the time said ordinance was passed, 300 of them were operated over two of the principal business streets each way every 30 minutes for 15 hours continuously, at an average speed of 15 miles per hour, and in the 60 to 75 days they had operated 100 accidents in which the jitneys were concerned had occurred, and in which one or more persons were injured and some lost their lives.

The state requires liquor dealers to give bond (Rev. Stat. § 7452), and authorizes anyone "aggrieved," and others, to sue thereon. In Peavy v. Goss, 90 Tex. 89, 37 S. W. 317, the act of the legislature requiring such bond was attacked because the title of the act was, "An Act to Regulate the Sale of Spirituous" Liquors, etc. It mentioned nothing about authorizing or requiring bond. The supreme court held the act perfectly valid, saying:

"The subject-matter of the act is the regulation of the sale of intoxicating liquors. The bond that is required to be given and the remedies upon it which are provided for are matters regulating the traffic, and are germane to the subject of the act, and come strictly within the purview of the title. The statute has but one subject, that of the regulation of the sale of liquors which produce intoxication."

The state, as a matter of regulation, requires ferrymen to get license from commissioners' courts (Rev. Stat. §§ 7024 et seq.) and execute a bond, upon which anyone injured can sue and recover. So, of pawnbrokers, factors, and others.

In the case of the Indianola v. Gulf, W. T. & P. R. Co. 56 Tex. 594, the court sustained the action of said city in requiring the railway company to execute to it a $50,000 bond as liquidated damages, conditioned that the railroad would, within a given time, extend the line of its railway a certain distance beyond the city limits, and held a recovery could be had thereon, if the railroad failed to comply with said condition. The state cites us to many other decisions from other jurisdictions tending to support the action of the city in requiring bonds of persons to exercise certain privileges and franchises upon its streets. As a general proposition, we think, there can be no doubt that the city of Ft. Worth could annex reasonable conditions to the exercise of the privilege or franchise to the jitneys to operate upon its streets.

On this point, as we see it, it resolves itself into whether or

not the judges of this court can say, as a matter of law, that to require of the jitney man to procure such a bond as a prerequisite to his running his business in the streets of Ft. Worth is so unreasonable and oppressive as a regulation of the business as to render that provision of the ordinance void. We have no knowledge on the subject other than is disclosed by the facts and record in this case, and the knowledge that we are presumed to possess in common with all other men. On the other hand, the city of Ft. Worth and its governing commissioners must have knowledge, and we must presume they have, which we cannot have. They are on the ground, and have for years had observation and experience about such matters, and daily, if not hourly, must see the effects of the operation of the jitney as well as the other common carriers of passengers for hire on its streets. As stated, the agreed facts are that the Board of Commissioners, in view of the traffic conditions, and the large number of accidents occurring from the operation of said jitney, deemed that there was an imperative and urgent necessity for the passage and enforcement of said ordinance 448. From a full consideration of the principles of law applicable, and the facts shown in this case, we cannot say that the city had no power or authority, and that there was no necessity for requiring the said indemnity bond, as a proper regulation of the business, and we cannot pronounce that feature of the ordinance void.

[5] We have had much difficulty in reaching a correct and satisfactory conclusion as to whether or not requiring the jitney operators to procure such bond, and not the other classes of common carriers of passengers for hire in the city, is so unreasonable or such a discrimination as to make this feature of the ordinance void. From our study of the facts and the law applicable, we think it reasonably certain that the record shows three separate and distinct classes of common carriers of passengers for hire in said city (outside of the steam and interurban railways not under consideration), to wit: First, the street car; second, the ordinary hack and automobile; and, third, the jitney. Clearly, the city so regarded them and acted upon such distinction.

In the case of Southwestern Teleg. & Teleph. Co. v. Dallas — Tex. Civ. App. —, 174 S. W. 636, is reported an exhaustive and able opinion by the court of civil appeals at Dallas, through

Judge Rasbury, an opinion which appeals strongly to us as correct on this subject. In that case the appellant therein attacked an ordinance of the city of Dallas, which, briefly stated, imposed a tax of $2 for each pole of appellant, and specially excepted therefrom any such tax on the poles of the street car company and of another telephone company, the competitor of the appellant therein. The appellant therein claimed that that was class legislation, discriminated against it, and violated the Federal and state Constitutions on the subject. Judge Rasbury states the contention of appellant therein in these words:

"It is next urged by appellant that the provisions of the ordinance are in violation of § 3, art. 1, of our Constitution, because discriminatory, and hence denies to appellant equal protection of the laws, and is in violation of § 1, art. 8, of our Constitution providing for equal and uniform taxation of citizens of the state and in violation of § 1, art. 14, of the Federal Constitution, guarantying to citizens of all the states equal protection of the laws."

We quote, with approval, what he says as follows:

"Class legislation or laws that affect a particular class are not unenforceable for that reason alone. The right of the legislature to classify persons, corporations, or subjects for taxation, regulation, or restriction in the broadest sense is not an open question under either our state or national Constitution, and the right to classify includes the right to exempt, as does the right to exempt include the concurrent right to discriminate. The rule of law in reference to the right of classification in the light of the constitutional provisions urged by appellant in force in this state is, of course, the rule adopted by the Supreme Court of the United States in applying to the state Constitutions and laws that provision of the national Constitution which guarantees to all the citizens of all the states of the United States the equal protection of the laws.

"In the case of Union Cent. L. Ins. Co. v. Chowning, 86 Tex. 654, 24 L.R.A. 504, 26 S. W. 982, the rule in this state with reference to classification was stated as follows: 'When legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions.'

The rule cited is from Missouri P. R. Co. v. Mackey, 127 U. S. 209, 32 L. ed. 107, 8 Sup. Ct. Rep. 1161, and is the present existing general rule in this and most, if not all, the other states of the Union, and under the rule nearly every conceivable character of classification, so long as it is reasonable and just, has been sustained. In the same case it is further said, 'If all persons subject to it are treated alike under similar circumstances and conditions in respect both of the privileges conferred and the liabilities imposed,' the constitutional inhibition has no application.

"It is also said in Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594: 'What satisfies this equality has not been, and probably never can be, precisely defined. Generally it has been said that it "only requires the same means and methods to be applied impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances" ' (citing Kentucky R. Tax Cases, 115 U. S. 321, 29 L. ed. 414, 6 Sup. Ct. Rep. 57).

"It was further said in Magoun's Case, supra, that 'it does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which it is to operate. . . . But what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principle they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustration, it may be safely said that the rule prescribes no rigid equality and permits to the discretion and wisdom of the state a wide latitude as far as interference by this court is concerned.' It is also said in the same case that the rule— 'is not without limitation, of course. "Clear and hostile discriminations against particular persons and classes, especially such as are of unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition." ' Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533.

"But it was also said, in Brown-Forman Co. v. Kentucky, 217 U. S. 563, 54 L. ed. 883, 30 Sup. Ct. Rep. 578: 'This restriction does not compel the adoption of "an iron rule of equal tax-

ation," nor prevent variety in methods of taxation or discretion in the selection of subjects, or classification for purposes of taxation of either properties, business, trades, callings, or occupations. This much has been over and over announced by this court.'

"Under the rule stated in the several ways by the citations quoted, what is the position occupied by appellant, and what equal protection of the law has it been denied, and what lack of equality or uniformity is shown by the ordinance as between appellant and similar concerns similarly situated? None we conclude. We do not understand that the rule which permits legislative bodies to classify persons, corporations, trades, businesses, subjects, etc., in order that the burdens of government may be justly and equally borne, denies them the right to classify classes. The rule announced by our supreme court in Union Cent. L. Ins. Co. v. Chowning, supra, comprehends such necessity in the varied and complex situations necessarily arising from the different situations and conditions of those who are to be so charged, when it declares that the test shall be that all of the constituents of the particular class shall be 'treated alike under like conditions.' The rule, as stated in Magoun's Case, also contemplated the classification of classes in the holding that all should be treated 'alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.' The right to subdivide a given class when such class is existing under dissimilar circumstances and conditions is sustained in Texas Co. v. Stephens, 100 Tex. 628, 103 S. W. 481, where it is said: 'Persons who, in the most general sense, may be regarded as pursuing the same occupation, as for instance, merchants, may thus be divided into classes, and the classes may be taxed in different amounts and according to different standards. Merchants may be divided into wholesalers and retailers, and, if there be reasonable grounds, these may be further divided according to the particular classes of business in which they may engage.'

"An apt illustration of the right to classify classes is found in the case of Pacific Exp. Co. v. Seibert, 142 U. S. 339, 35 L. ed. 1035, 3 Inters. Com. Rep. 810, 12 Sup. Ct. Rep. 250, the issue being the validity of an act of the Missouri legislature imposing a tax upon all express companies carrying on the business of

transportation on contracts for hire with railroad or steamboat companies, but exempting all other concerns carrying on an express business and owning its own means of transportation, such as steamboat and railroad companies. This act was attacked upon the same grounds that the ordinance in the instant case is attacked. The classification was sustained, the Supreme Court of the United States holding there was a vital and essential distinction between express companies defined by the act and those concerns exempted from the tax, in that railroads paid taxes upon their roadbeds, rolling stock, and other tangible property, and generally upon their franchise, as did steamboat companies, while on the other hand, express companies of the kind defined by the act have no tangible property of consequence, and that the exemption was a just discrimination in order that the burdens of government might be equally borne. Is there then such essential distinction between those exempted by the ordinance here involved and appellant, as justifies the classification? We conclude there is. The ordinance levies the charge of $2 per pole against all persons or corporations occupying the streets of the city therewith, and excepts therefrom all persons or corporations owning and using poles in the operation of street railways and those which, by the terms of their franchise, pay to the city a proportion of their gross receipts. The ordinance, fairly construed, assumes, that other persons and corporations occupy the streets with poles similar to those of appellant. The undisputed facts show, which we have not stated before, that several street railways occupy the streets of the city with their trolley poles, whereon wires are strung, to be used in propelling their cars by electricity; that another telephone company has poles upon the streets similar in all respects to those of appellant and used for the same purpose; that said other telephone company is operating under a franchise by which it pays to the city 4 per cent of its annual gross receipts furnishes free one duct in its underground conduits, and one cross arm on its poles for police and fire alarm purposes, together with 63 free telephones; that appellant does not pay the city a proportion of its earnings, yet its earnings, as indicated by the evidence, is two thirds greater than those of the competing company; that the street railways exempted from said ordinance by the provisions of the city charter (article 10, § 1, cl. D) are

required by law to pay the cost of paving the streets between their rails and 2 feet outside such rails, and may be required to drain and light streets over which they pass, and to construct and keep in repair bridges and crossings, as well as construct and maintain culverts and drains on streets over which they pass. Charter, art. 2, § 8, cl. 26. These facts indicate the inequality of the contributions to the city for the privileges enjoyed by appellant and those exempted from the provisions thereof, and, in our opinion, sustain the discrimination as lawful, and the finding of the jury that they are reasonable. The matter of the payment of other taxes is, in our opinion, immaterial and beside the issue. Those exempted, as well as appellant, pay an ad valorem tax upon their tangible property, including their franchise, at least such tangible assets are subject to an ad valorem tax, and the presumption is that it has been so subjected. All tax payments on tangible assets thus properly eliminated, since equal, it comes to this: That the constituent class to which appellant belongs is contributing a much less amount for the privilege of using the streets with its poles than are those exempted from the provisions of the ordinance, and, that being true, it follows as matter of course that there has been no arbitrary or unlawful classification."

In the recent case of St. Louis Southwestern R. Co. v. Griffin, — Tex. —, L.R.A. —, 171 S. W. 706, our supreme court, through Chief Justice Brown, quoting from Houston & T. C. R. Co. v. Dallas, 98 Tex. 396, 70 L.R.A. 850, 84 S. W. 648, said:

"The power of the legislature to regulate the use of property and the carrying on of business so as to protect the health, safety, and comfort of citizens is recognized by all of the authorities, and its use is not to be defeated by the mere fact that loss or expense may be imposed upon the owners of the property or business. Northwestern Fertilizing Co. v. Hyde Park, 97 U. S. 659, 24 L. ed. 1036."

In the case of Patsone v. Pennsylvania, 232 U. S. 138, 58 L. ed. 539, 34 Sup. Ct. Rep. 281, it is shown that the state of Pennsylvania, in order to protect its wild game, passed a law making it an offense for a resident unnaturalized alien to own or be possessed of a shotgun or rifle, and also forfeited the gun where such person was shown to own or to be possessed of it. The act was attacked as an unjust discrimination, and deprived the alien of

his property contrary to the 14th Amendment to the United States Constitution. The United States Supreme Court in that case said:

"Under the 14th Amendment the objection is twofold, unjustifiably depriving the alien of property, and discrimination against such aliens as a class. But the former really depends upon the latter, since it hardly can be disputed that if the lawful object, the protection of wild life (Geer v. Connecticut, 161 U. S. 519, 40 L. ed. 793, 16 Sup. Ct. Rep. 600, warrants the discrimination, the means adopted for making it effective also might be adopted. The possession of rifles and shotguns is not necessary for other purposes not within the statute. It is so peculiarly appropriated to the forbidden use that if such a use may be denied to this class, the possession of the instruments desired chiefly for that end also may be. The prohibition does not extend to weapons such as pistols that may be supposed to be needed occasionally for self-defense. So far, the case is within the principle of Lawton v. Steele, 152 U. S. 133, 38 L. ed. 385, 14 Sup. Ct. Rep. 499. See further New York ex rel. Silz v. Hesterberg, 211 U. S. 31, 53 L. ed. 75, 29 Sup. Ct. Rep. 10; Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192, 57 L. ed. 184, 33 Sup. Ct. Rep. 44.

"The discrimination undoubtedly presents a more difficult question. But we start with the general consideration that a state may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one, dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named. Lindsley v. Natural Carbonic Gas Co. 220 U. S. 61, 80, 81, 55 L. ed. 369, 378, 379, 31 Sup. Ct. Rep. 337, Ann. Cas. 1912C, 160. The state 'may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses.' Central Lumber Co. v. South Dakota, 226 U. S. 157, 160, 57 L. ed. 164, 169, 33 Sup. Ct. Rep. 66, 67; Rosenthal v. New York,

226 U. S. 260, 270, 57 L. ed. 212, 216, 33 Sup. Ct. Rep. 27, Ann. Cas. 1914B, 71; L'Hote v. New Orleans, 177 U. S. 587, 44 L. ed. 899, 20 Sup. Ct. Rep. 788. See further Louisville & N. R. Co. v. Melton, 218 U. S. 36, 54 L. ed. 921, 47 L.R.A. (N.S.) 84, 30 Sup. Ct. Rep. 676. The question therefore narrows itself to whether this court can say that the legislature of Pennsylvania was not warranted in assuming as its premise for the law that resident unnaturalized aliens were the peculiar source of the evil that it desired to prevent. Barrett v. Indiana, 229 U. S. 26, 29, 57 L. ed. 1050, 1052, 33 Sup. Ct. Rep. 692.

"Obviously the question, so stated, is one of local experience, on which this court ought to be very slow to declare that the state legislature was wrong in its facts. Adams v. Milwaukee, 228 U. S. 572, 583, 57 L. ed. 971, 977, 33 Sup. Ct. Rep. 610. If we might trust popular speech in some states it was right; but it is enough that this court has no such knowledge of local conditions as to be able to say that it was manifestly wrong. See Trageser v. Gray, 73 Md. 250, 9 L.R.A. 780, 25 Am. St. Rep. 587, 20 Atl. 905; Com. v. Hana, 195 Mass. 262, 11 L.R.A.(N.S.) 799, 122 Am. St. Rep. 251, 81 N. E. 149, 11 Ann. Cas. 514."

In our opinion the agreed facts in this case show such a marked distinction between the three characters of passenger carriers for hire and the extent and manner of their use of the streets as to justify the city in requiring the operator of the jitney to give such bond, and in not requiring either of the other classes of carriers to do so, and that we cannot therefore hold this provision of the ordinance void.

[6] In connection with this matter, the applicant contends, in effect, that it is unreasonable and oppressive to require him to take out the indemnity insurance from some company designated by the ordinance, and that instead he should be permitted to give personal sureties if he so desires, and he suggests that there might be but one insurance company which would issue such policy in the whole state. But no such state of fact is shown before us. The reason why the city requires an indemnity by an incorporated company instead of personal sureties is made to appear clearly by the agreed facts to the effect, as shown by subdivision 27 of the agreed facts copied above. It is unnecessary to again copy it here. Nothing in this record is shown which would justify us to

conclude that said ordinance in the particulars mentioned is unreasonable or oppressive. On the contrary, we are impressed that they are reasonable and proper, especially in view of the agreed facts.

[7, 8] Again, the applicant attacks those provisions, in effect, requiring him to select a given route over which he will run his motor bus, jitney, designating the termini, and requiring him to stick to that route and termini, and prohibiting him from operating elsewhere, and requiring him to run, or cause to be run, his jitney for not less than 12 consecutive hours out of every 24, except on Sundays, and a reasonable time for going to and from meals, and in case of accidents, breakdowns, or other casualties, or upon the surrender of said license. The applicant's able attorneys, as we understood, both in their oral argument and brief herein, admitted and contended that the operators of the jitneys were common carriers. There can be no question of the correctness of this. Then, as common carriers, they subject themselves to all reasonable regulations in the matters mentioned. Being common carriers and subjecting themselves to such regulations, the public unquestionably has rights in the premises. As we understand the ordinance, the city does not undertake to itself fix the route and termini of the jitneys, but, with some restrictions, permits the operators of the jitneys themselves to make such selection. If they are to operate as common carriers, then the public has the right to know when and where they will operate, and to require them to do so with promptness and regularity. It would certainly be unreasonable to the public that, after they have selected and established their route and termini, they could, at any time, abandon that and take up some other. They have no more right to thus shift from time to time and place to place than the street car carriers would have so to do. Suppose, for instance, the street car system operating on regular schedule time, as they are required to do from day to day and within reasonable hours, should for any reason, without necessity, conclude that on one day or all the days of one week they would not run their cars on their lines north and south, but instead run them east and west, or *vice versa*. The public would be so inconvenienced by this as to make such a condition of things intolerable, and as a matter of fact it would not be tolerated. So, with the jitney, they select a certain

route and termini. Their patrons, the public, adjust themselves to this, and depend upon them to run that route on schedule time within reasonable hours. But the jitneys without necessity conclude that for a given day or for each day of a given week they will not run on that line at all, but run on another and a different one. The disappointment and inconvenience and trouble to the public that had adjusted itself otherwise would be an outrage to such an extent that such condition of things by the jitneys would not, and should not, be tolerated. The ordinance on this subject, it seems to us, instead of being unreasonable, is most reasonable, and permits them at any time to apply to the city for a change in their route or termini, and the ordinance provides that the city, in its discretion, can make such desired change. The agreed facts show that the jitneys now operate an average of 15 hours each day. Surely that they should be required by the ordinance to operate, with the exceptions mentioned, 12 hours, is not unreasonable and violates no law. It seems to us that the ordinance makes every exception in this regard that would be either necessary or proper.

[**9, 10**] Again, the applicant attacks that subdivision of § 2 of the ordinance following subdivision "g," wherein it is prescribed that the Commissioners may grant the application for license to operate the jitney as applied for, or grant it in modified form, or under certain conditions, decline to grant it at all. As to this, we think the applicant is not in position to attack this provision, for the agreed facts show that he has not been denied any license, and in fact has made no application whatever himself, but refused to do so. Under such circumstances the rule is as stated in Kissinger v. Hay, 52 Tex. Civ. App. 295, 113 S. W. 1008, expressly approved and adopted by this court in Ex parte Wilson, 56 Tex. Crim. Rep. 1, 117 S. W. 1197, that where one has not applied and been refused, he cannot complain. Young v. Colorado, — Tex. Civ. App. —, 174 S. W. 994; 8 Cyc. 787–789. The rule prevails in the United States Supreme Court, to the effect that it will not hear objections to the constitutionality of any law from those who are themselves not affected by such provisions; that in order to require the court to pass upon such questions they must affirmatively show they have been denied rights by reason of it. Southern R. Co. v. King, 217 U. S. 524, 534, 54 L. ed. 868, 871,

30 Sup. Ct. Rep. 594; Engel v. O'Malley, 219 U. S. 128, 135, 55 L. ed. 128, 135, 31 Sup. Ct. Rep. 190; Standard Stock Food Co. v. Wright, 225 U. S. 540, 550, 56 L. ed. 1197, 1201, 32 Sup. Ct. Rep. 784; Yazoo & M. Valley R. Co. v. Jackson Vinegar Co. 226 U. S. 217, 219, 57 L. ed. 193, 194, 33 Sup. Ct. Rep. 40; Rosenthal v. New York, 226 U. S. 260, 57 L. ed. 212, 33 Sup. Ct. Rep. 27, Ann. Cas. 1914B, 71; Darnell v. Indiana, 226 U. S. 390, 398, 57 L. ed. 267, 272, 33 Sup. Ct. Rep. 120; Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531, 544, 58 L. ed. 713, 719, 34 Sup. Ct. Rep. 359; Missouri, K. & T. R. Co. v. Cade, 233 U. S. 642, 648, 58 L. ed. 1135, 1137, 34 Sup. Ct. Rep. 678. However, we might state that as we understand by it the city could not, "without rhyme or reason," arbitrarily refuse to issue to the applicant a license under said ordinance if he complied therewith. But, as we understand that provision, the city reserves to itself authority to refuse to issue license to any and every one under certain conditions. For instance, suppose others, including, or even excluding, the applicant, had already applied for and been granted license on certain routes to a large number, and to such a number as that any others on it would be a great menace to public safety. It is shown by the agreed facts that there were 300 of these jitneys constantly running up and down the two main business streets in the city. Say they were equally divided; then there would be 75 on one side of the street running one way and 75 on the other side running in an opposite direction. Under such circumstances, surely the city would have the right to say that such a number, or even a much less number, is sufficient, and to permit a greater number would be too great a menace constantly to life and limb and property. Under such circumstances the city would not only have the discretion to refuse another license, but it would be its imperative duty to absolutely refuse all others on those streets. In any event, this provision of the ordinance, in our judgment, is not unlawful, unreasonable, or void. Fischer v. St. Louis, 194 U. S. 361, 48 L. ed. 1018, 24 Sup. Ct. Rep. 673; Ex parte Broussard, — Tex. Crim. Rep. —, L.R.A. —, 169 S. W. 660, and authorities therein cited; Kissinger v. Hay, supra, and authorities therein cited.

We see nothing in the ordinance that would make it obnoxious

to our Constitution, or any statutory provision preventing monopolies. It occurs to us that the very reverse of this is true.

As we view the matters, there is no necessity of discussing any other question. Those discussed and decided, we think, dispose of the case.

The applicant, in our opinion, is not entitled to a writ of habeas corpus, nor discharge if one had been granted. It will therefore be ordered by the court that his application be in all things denied, and that he be and is hereby remanded to the custody of the proper officer, or his successor, who held him when this court took jurisdiction and admitted him to bail.

Harper, J.:

I concur in the result reached, and may write my views later.

Davidson, J., dissenting:

There are some questions which ought to be recognized as settled law with reference to municipal corporations: First, that such corporation is of legislative creation; second, that it can only exercise such authority as has been expressly conferred; third, that such authority must be within constitutional limitation; fourth, that its powers are subordinate to general legislation; fifth, that if there be a doubt of its right to exercise authority or power to act, that doubt must be resolved in favor of the grantor and against the grantee; sixth, that its acts and ordinances must be within the grant; and, seventh, its ordinances must be reasonable, fair, and not discriminating. I regard these propositions as axiomatic and need no elaboration, discussion, or citation of authorities. Within these rules the city may control its streets, and regulate their use. It should be understood that a city and its granted powers are predicated upon the basic principle that they are to be used and exercised for the benefit of those who travel or use such streets, and this without discrimination. To this end and for this purpose these streets are laid out and kept in repair. It may be stated also as axiomatic, that the citizen is not made for the street; the street is made for the citizen and his use. The city cannot prohibit such use, but may reasonably regulate it. That the city may regulate the use of the streets ought not to be questioned, but such regulation should be fair and reasonable. Autocratic power does not belong to nor in-

here in our republican form of government, either in the state, legislative department, or municipal government. Citizens' Sav. & L. Asso. v. Topeka, 20 Wall. 655, 22 L. ed. 455. All power is inherent in the people, not the government, and in delegating authority to the various departments of government our citizenship did not surrender their inherent power, and such as has been delegated may be recalled or modified by amendment to the Constitution, or by the ordination of a new Constitution. The diversification of this delegation of power has been so given as to prevent usurpation of power or embezzlement of authority. The legislature is supreme in law making, and its authority cannot be invaded nor delegated, and it is bounded by constitutional limitations. Cities are subordinate, and must live within the limits of its grant or charter. Police power is but an incident to legislation. Whatever may be the necessity for its exercise, that necessity is limited by impassible barriers. Withdraw the legislative delegated authority, and the police power passes with that withdrawal. The legislature cannot exceed or transfer its delegated authority any more that can the judiciary or executive. While these statements are general and may be regarded as legal platitudes in a sense, still it is well to have frequent recurrence to first principles, "lest we forget," and it may be absolutely necessary to do so that precedents may be kept within the reason of the law and the purpose of the written Constitution. It may be well also to restate that great truth, sometimes overlooked, that the government is made by man and for his benefit, and that man is not made by nor for the government. Recent history—legislative and judicial—does not seem to have kept these propositions well or strictly in hand or in memory. Police power, whatever may be the necessities, is operative only to subserve our citizenship, their rights and their interest. It cannot be made an engine of oppression, nor used to destroy the rights of our people, nor can it be resorted to to paternalize our government. These rights are sacred, whether in the state at large or within the confined limits of municipal corporations. Such authority should be confined to the regulation of matters appertaining to such corporation and the exigencies of such territory, and this only when the matters are not covered by the general law of the land. There are many things doubtless affecting the aggregation

of people in cities which do not affect the people at large in the state. Under such circumstances cities should have sufficient police power for reasonable regulation. One of such matters is reasonable control of streets. This regulation should be exercised for the benefit of the citizenship of the city and those who use the streets for necessary purposes, always attended by the fundamental rule that such use must be exercised so as not to injure the rights of others or the public rights.

It occurs to me that the ordinance in question, viewed in the light of other ordinances mentioned in the statement of facts, is not only discriminating and unreasonable, but intended to be prohibitive, and its bond feature is not authorized, and, in my judgment, void. Illustrative of the above, an inspection of one ordinance discloses that all autos of every size and description are authorized to carry passengers throughout and all over the city of Ft. Worth by paying a license fee of $3 per annum, and for this no bond or insurance policy is asked or required in the way of indemnity. Under the other ordinance an auto carrying five passengers must pay $10 per annum; if it carries seven passengers it must pay $20 per annum, and if above seven passengers it must pay $30. In addition to these matters these autos or jitneys are confined to specific or segregated lines and streets. Besides this, each auto or the licensee under the second ordinance must take out an insurance policy to protect such licensee from "legal liability," provided such policy can in no event redound to the benefit of passengers carried in such auto. For this policy or indemnity contract the licensee must pay the exacted fee or premium demanded by the insurance companies. There may be no limit even set to the amount of the premium or fee to be paid. Otherwise the license cannot be obtained as authority for running the jitney. The insurance company, no one else, can sign the contract. If it demands $500 as a premium or fee, it must be paid, and this is made a prerequisite before the licensee can obtain the necessary license to operate his auto or jitney. Under one ordinance the auto or common carrier only pays $3 for the privilege of becoming a common carrier in the city limits for the space of one year. Under the other ordinance the auto, which we may call a jitney, pays from $10 to $30, besides the premium demanded by the insurance company. This looks to me to be

sharply discriminating. It may be asked why this difference is made under the two ordinances. Can it be said that the passengers are less safe in one than in the other auto? If so, how or why? Can it be urged that the traveling public on the streets is less liable or more liable to damage from one of the autos than from the other? If so, how or why? It may be further asked if the public along the street is any more safeguarded by the exaction of from $10 to $30 than by the demand of $3. It occurs to me these ordinances cannot be reconciled along reasonable lines. It is not clear to my mind why the indemnity contract or insurance policy is demanded under one ordinance, and not under the other. It does not redound to the benefit of either the passengers in the car, for they expressly are excluded, or those traveling along the public streets, for the simple reason that by its terms the "legal liability" is limited to the licensee of the vehicle driven. Neither the passengers nor the public have any interest in the contract or policy. Nor is it clear to my mind how this indemnity policy, executed in favor of the licensee, could be any protection to anybody, unless it be the licensee. Before his legal liability could possibly arise that liability must be fixed in some way definitely upon the licensee, and if he were called upon to pay money in any way for damages or injury to people on the streets, he might possibly have a cause of action against the insurance company. This, if true, certainly would result in a multiplicity of suits to say the least of it, the end of which might be to defeat all rights even of the licensee. This indemnity contract is a matter exclusively between the jitney owner or licensee and the insurance company—made so on its face, without even specifying what is meant by the term "legal liability."

It may be asked, Does this term "legal liability" mean an indemnity of the licensee for what he may pay out for damages or cause to be made to pay out for damages, or is it protection against him from prosecution for injury of a criminal nature he may commit in running over or killing people on the streets? If it protects him against liability for his violation of criminal statutes, certainly it would hardly be maintainable against the insurance company. Indemnity of a party against his own criminal or tortious act would hardly be a legal contract. But viewed in another light, this indemnity contract under the ordinance is

and can only be a matter between the licensee and the insurance company, that is, it is a contract between third parties to which the city is not a party and is not and cannot be made a party, and in which the municipal corporation as such has not and can have no interest. It could not change the relation of the third parties to each other by making a cause of action or defeating a cause of action or in lessening or enhancing the liability for acts between third parties. The public or the city has no interest in it. It is a matter between the licensee and the insurance company. There is ample authority, as I understand the law, based on sound principles, for the proposition that the city cannot demand or require bonds or contracts inuring to or operating only between third parties. This has been a matter of adjudication frequently. In support of the above proposition I cite Park Bros. & Co. v. Sykes, 67 Minn. 153, 69 N. W. 712; Breen v. Kelly, 45 Minn. 352, 47 N. W. 1067; Philadelphia v. Madden, 23 Pa. Co. Ct. 39; Lyth v. Hingston, 14 App. Div. 11, 43 N. Y. Supp. 653; Jefferson v. Asch, 53 Minn. 446, 25 L. R.A. 257, 39 Am. St. Rep. 618, 55 N. W. 604. To the same effect is Taylor v. Dunn, 80 Tex. 652, 16 S. W. 732; House v. Houston Waterworks Co. 88 Tex. 233, 28 L.R.A. 532, 31 S. W. 179; Galveston & W. R. Co. v. Galveston, 90 Tex. 411, 36 L.R.A. 33, 39 S. W. 96. Many other cases could be cited.

The further proposition, to my mind clear, is that a city can in no event demand indemnity bonds except for municipal purposes and to protect city contracts; these contracts inuring to the benefit of the municipal corporation. As between third parties the city has no concern and can neither lessen nor aggravate any cause of action between the citizens of a municipality, nor can it create a cause of action between them. For this reason it seems to me the city ought to be powerless to demand of one citizen an indemnity contract in favor of another citizen. But if, in any event, this can be done, there should at least be expressly granted authority in the city charter for so doing. This has not been done to the city of Ft. Worth. I do not care to further discuss this question, except to observe that the bond must be given with a corporation as surety, and such bond could not be signed by private persons as sureties, though the wealthiest in the state.

This is additional discrimination and sufficient to nullify the ordinance.

Another question I mention briefly. The fees demanded are not, in my judgment, license fees. It is a tax pure and simple, and a tax of a graduated nature, ranging from $10 to $30 according to the number of passengers carried in the car or auto. If it is a license fee in fact, or so intended, it should make the same equal alike to all autos without reference to the number of passengers carried. This was done under the ordinance which demands a $3 license fee. The fee, which is in my judgment a tax under the ordinance under which relator was arrested, is not fixed on or confined to the auto as such, but to the number of passengers the auto carries, not as a regulation of the jitney, but as a tax proportioned to the number of passengers carried. This is not only a tax, but it is one in my judgment entirely discriminatory on its face as well as in its operation. The city is not authorized to levy this character of tax; therefore in the ordinance it is denominated a license fee. Under the guise of a license fee a tax, and a graduated tax at that, is levied and demanded. A license fee must be commensurate with the expense of maintaining the regulations, and cannot be used as a mere means of putting money into the treasury except for that purpose, and cannot be used as a revenue measure.

There is another matter of constitutional law involved in this case to which I might refer; that is where a constitutional right exists in favor of the citizen, the power does not exist in the state or legislature to require the giving of a bond which materially abridges or entrammels the exercise of such constitutional right.

This rule is well recognized, both in criminal and civil cases. In Callan v. Wilson, 127 U. S. 540, 32 L. ed. 223, 8 Sup. Ct. Rep. 1301, Justice Harlan in an elaborate opinion, concurred in by the entire court, held the right of trial by jury could not be abridged by requiring an appeal to a higher trial court when an appeal bond would have to be given as a prerequisite to secure such jury trial. That case has not been overruled nor modified. Many cases were reviewed bearing on principles of constitutional law. Trial by jury is not a more sacred right than the right of the citizen to pursue any lawful calling or business, even the right to use the streets of a city. Subject to lawful police regula-

tion, as above observed in this opinion, such a business or calling as carrying passengers in a carriage or auto through the streets, and the general use of the public streets by the auto or "jitney" are matters as much of constitutional right as that of trial by jury, and can no more be abridged than the trial by jury. Police regulations or power must always act uniformly upon all alike in the same situation, and there can be no discrimination. There may be classification of subjects of police regulations where the classification arises from the nature of the subjects, and such subjects show a difference in the expense of maintaining reasonable police regulations; so, in this case there could be no different fees and regulations. However, such classification must be reasonable and just, and founded upon the nature of the subjects for classification. It can never be arbitrary, nor rest upon the mere will or caprice of the city, state, or legislative authority. The discriminations in the ordinances here involved are not reasonable nor just, but on their face, when the subjects of the nature of the discriminations are considered, show they are illegal, arbitrary, and depend upon the mere will of the legislative branch of the city. It may be matter of doubt that an ordinary auto is more hazardous to the public than an ordinary two-horse carriage or similar vehicle. Certainly one of two autos of the same size, with same or even different seating capacity, is not more hazardous or dangerous to the public than the other, nor does it, strictly speaking, require more expense in regulation than the other. Yet none of these regulations apply to carriages in Ft. Worth, and the discrimination between the autos of the same carrying capacity under one ordinance as against those under the other ordinance is purely arbitrary and exists without reason or justification, and only by the mere will of the ordinance-making power. For all the above reasons the ordinance is void under the 14th Amendment to the Federal Constitution, which provides that no person shall be deprived of life, liberty, or property without due process of law or be denied equal protection of the law, as well as under the provisions of the state Constitution and the Bill of Rights, which are to the same effect.

I have not discussed this ordinance in relation to other common carriers of the city, one of which is the street railway company, but I have said enough to convey some of the ideas I have for

disagreeing with my brethren in upholding this ordinance. I, therefore, have reached the conclusion that the ordinance is unreasonable, is discriminatory, is intended to be prohibitive, and its bond feature is void, and that the alleged license fee is a tax, and not a license. I cannot, therefore, concur with my brethren in upholding this ordinance.

TEXAS COURT OF CIVIL APPEALS.

AUTO TRANSIT COMPANY et al.

v.

CITY OF FORT WORTH et al.

[No. 8304.]

(— Tex. Civ. App. —, 182 S. W. 685.)

Injunction — Criminal proceedings — Enforcement of jitney ordinance.

1. Injunction will lie in a proper case to prevent the threatened enforcement of a criminal jitney ordinance, where its validity is involved.

Courts — Jurisdiction — Enjoining enforcement of criminal ordinance.

2. Although a court is of exclusive civil jurisdiction, it may inquire into the validity of a criminal jitney ordinance and restrain an enforcement which will destroy property rights.

Constitutional law — Jitney regulation — Equal rights.

3. An ordinance requiring a license fee of $10 for jitneys, while taxicabs and other rent cars pay only $3, and a street railway pays nothing, and that requires the execution of a bond to pay damages arising from wrongful operation, while none is required of taxicabs, other rent cars, and the street railway, is not obnoxious to a constitutional guaranty of equal rights.

Constitutional law — Jitney regulation — Class legislation.

4. Jitneys may be separated from taxicabs, other rent cars, and street railways for the purpose of municipal regulation.

Constitutional law — Jitney regulation — Impairment of contract obligation — Licenses.

5. A jitney ordinance increasing a license fee over that paid by operators under a prior ordinance does not unconstitutionally impair the obligation of a contract, particularly where the new ordinance provides for a new license for the unexpired term or the refunding of the fee for such term.

Constitutional law — Jitney regulation — Adequate compensation.

6. A jitney ordinance requiring a license, a fee of $10, operation over a fixed route, a bond to pay damages arising from wrongful operation, and otherwise regulating jitneys, does not violate a constitutional provision that property shall not be taken, damaged, or destroyed for public use without adequate compensation being made.

Action or suit — Defenses — Who may question constitutionality of jitney ordinance.

7. Jitney operaters cannot complain that an ordinance authorizing the suspension or revocation of a license, on a showing of conviction for a violation of the ordinance, contravenes a constitutional guaranty of due process of law, where they are operating under a prior ordinance containing the same provision.

Automobiles — Jitneys — License fee — Occupation tax.

8. An ordinance requiring a jitney operator to pay a license fee of $10 does not conflict with article 8, § 2, of the Texas Constitution, that occupation taxes shall be equal and uniform upon the same class of subjects, since the fee is not an occupation tax, and even if it were such a tax, it makes no discrimination between members of the same class.

Monopoly and competition — Constitutional law — Jitneys.

9. An ordinance restricting the operation of jitneys, that does not disclose on its face the creation of a monopoly in favor of street cars, taxicabs, or other rent cars, does not violate a constitutional anti-monopoly provision.

Automobiles — Jitneys — Validity of ordinance.

10. The fact that jitney operators cannot pay the large premium demanded on bonds, required by ordinance, to pay damages arising from wrongful operation, or that they will suffer pecuniary injury from the enforcement of the ordinance, does not *per se* establish its invalidity.

Automobiles — Jitneys — Authority to enact ordinance.

11. A jitney ordinance requiring a license, a fee of $10, operation over a fixed route, a bond to pay damages arising from wrongful operation, and otherwise regulating jitneys, is authorized by charter power to enact and enforce ordinances necessary to protect health, life, and property; to prevent and remove nuisances; to preserve and enforce good government, order, and security; and to have and enjoy general police powers.

On Motion for Rehearing.

Constitutional law — Jitney regulation — Class legislation — Indemnity bond.

12. An ordinance requiring a jitney operator to give a bond to pay damages arising from wrongful operation does not discriminate in not requiring a bond of the driver of a taxicab, rent car, or private car, since jitney operation is the more dangerous.

[January 15, 1916.]

FROM an order of the District Court of Tarrant County, Marvin H. Brown, Judge, refusing to continue a temporary injunction against the enforcement of an ordinance of the city of Ft. Worth, regulating jitneys, plaintiffs appeal; affirmed.

Motion for rehearing overruled January 15, 1916.

Appearances: Ike A. Wynn for appellants; T. A. Altman for appellees.

Buck, J., delivered the opinion of the court:

This was a proceeding by the Auto Transit Company, a corporation domiciled in Ft. Worth, Tarrant county, Texas, and J. C. Walton, a resident of said county, professedly on behalf of themselves and 60 other "motor bus" or "jitney" owners and operators, against the city of Ft. Worth, represented by its mayor and four commissioners, seeking to enjoin the enforcement of ordinance No. 448, and as amended by ordinance No. 470, theretofore passed by the said Board of Commissioners, regulating the operation of said motor buses, or jitneys, in common parlance, on the streets of said city. Both ordinances were attached to and made a part of the petition. Petitioners alleged that they, and those for whom they sued, had complied with ordinance No. 448 when it became effective, and had since been operating thereunder. Petitioners also alleged that ordinance No. 442, theretofore passed by the city of Ft. Worth, provided that every owner of a motor-driven vehicle should register the same and pay a license number tax to the assessor and collector of $1 per car, and that they, and those for whom they sued, had complied with the said ordinance also. It was further alleged that the Auto Transit Company owned and operated 32 motor buses, and had invested in its cars about $17,500, and the plaintiff Walton about $500. Others for whom

suit was brought were also alleged to have invested approximately the sum of $500 each; and it was averred that the effect of ordinance No. 470 would be to drive the motor bus or "jitney" out of competition with the street railway company operating in Ft. Worth, and to give a monopoly to said street railway company of the transportation of passengers within said city; that the city of Ft. Worth embraces about 17½ square miles, and has a population of about 100,000; that it has many miles of streets which are traversed by the street cars, and by far the greater portion of its inhabitants do not live adjacent to street car lines, and that the jitney has been for some time a necessary public conveyance and utility, and is an economical and efficient development of local transportation necessary for the convenience and welfare of the great majority of the inhabitants of said city; that there are now in operation in said city about 150 jitneys, which carry many thousands of passengers each day. It was further alleged that petitioners were unable to comply with the provisions of ordinance No. 470 requiring a bond in the sum of $2,500, payable to the mayor of the city of Ft. Worth, and executed by the person in whose name the license is sought as principal, and a solvent surety corporation, incorporated under the laws of the state of Texas, or with permit to do business in this state, conditioned that the principal shall pay all legal damages for injuries to property or person of anyone, including injuries resulting in death on account of the negligence or wilful act of the owner or operator of such motor bus, etc., inasmuch as the fee for said bond was unreasonable and even prohibitory, such companies charging from $200 to $250 for each said bond executed. Further allegations were made as to the terms, requirements, and conditions of said ordinance No. 470 with reference to the operation of motor buses or jitneys, as contained in subdivision "g" of § 5 of said ordinance, which petitioners alleged were discriminatory, and constituted an unnecessary and unreasonable regulation beyond the police power of the city, and violated the Constitutions of the United States and the state of Texas. It was further alleged that, inasmuch as it is practically impossible for petitioners to comply with the provisions of said ordinance, they would be greatly injured in their property and property rights, and would be deprived of the privileges and immunities

guaranteed to them by the laws of the land, if such ordinance should be enforced, and that the city of Ft. Worth, through its said Board of Commissioners, was threatening and attempting to enforce said ordinance, and that, unless it was restrained, it would subject plaintiffs, their agents and employees, and those in whose behalf they brought suit, in case they did not comply with the provisions of said ordinance, which compliance was alleged to be impossible, to innumerable arrests and prosecutions and much vexation, harassment, and oppression.

Accompanying, and in support of, said petition was an affidavit of E. M. Rogers, president of the Auto Transit Company, to the effect that said company had been incorporated for the purpose of owning, maintaining, and operating automobiles and other vehicles designed for the purpose of carrying passengers, freight, express, and mail in the city of Ft. Worth; that said company had paid its franchise tax for 1915; that the jitneys or motor buses in the city of Ft. Worth numbered about 150, and carried approximately 30,000 passengers each day for a 5-cent fare; that there were a great many taxicabs and rent cars operating in Ft. Worth, and said rent cars were five-passenger Ford automobiles, and practically identical with those operated by plaintiffs, and such cars were operated over the streets in the same manner as plaintiffs' jitneys, with the same attendant risks and dangers; that said taxicabs and rent cars charged many times as much for carrying a passenger as plaintiffs charged; that the Northern Texas Traction Company is a private corporation operating street cars over certain streets in the city of Ft. Worth for a fare of 5 cents; that an automobile is not a dangerous machine, or an unsafe means of conveyance, and that a careless or reckless driver makes the operation of an automobile just as hazardous when he is operating a private car or rent car as when he is driving a jitney or motor bus; that the jitneys constituted a great convenience to the inhabitants of the city of Ft. Worth, many of whom choosing and preferring this mode of travel. Affiant further averred the compliance by his company with the provisions of ordinances Nos. 442 and 448, and the payment by it of various sums of money for registration of license fees and the purchase of indemnity contracts, as provided by said ordinances, that it was impossible to make personal bonds,

as provided in the alternative in ordinance No. 470, and was wholly impossible to comply with the provisions requiring bonds by surety companies, and that it would cost said plaintiff company $6,600 to procure the bonds executed by a surety company.

Also there were affidavits from E. W. Scott and Adams B. Vera containing practically the same averments. Also an affidavit signed by some eleven persons alleged to be citizens of Ft. Worth, to the effect that the Northern Texas Traction Company owns and operates a street railway system in the city of Ft. Worth, and has about 77 miles of trackage, and runs about 200 cars over the streets of said city, and that there are about 100 other carriers of passengers for hire in the way of taxicabs, omnibuses, etc., running over said streets, and that none of these mentioned carriers are required to carry passenger insurance as provided in said ordinances applicable to the jitneys.

A temporary restraining order was granted by the trial court, and upon hearing on June 26, 1915, the court declined to continue said temporary injunction, which expired on the day of hearing, and denied plaintiffs' prayer so to do, to which order of the court the plaintiffs excepted and gave notice of appeal.

Plaintiffs have not filed in this court briefs containing formal assignments of error, and under the law they are not required to do so (Holbein v. De La Garza, — Tex. Civ. App. —, 126 S. W. 42; Ft. Worth & D. C. R. Co. v. Craig, — Tex. Civ. App. —, 176 S. W. 827), but have contented themselves with filing a memorandum of authorities. But we have had the benefit of an able and exhaustive brief furnished by appellee.

On the threshold of the consideration of this cause we are met with two questions affecting the jurisdiction of this court, to wit: First, whether an injunction will lie to restrain the enforcement of a criminal statute or ordinance; and, second, even though it be admitted that in certain instances such relief may be granted, may the authority to grant such relief be exercised by a court of exclusive civil jurisdiction, or has the authority been delegated to courts exercising criminal jurisdiction?

[1] First. As has been often said, it is a general rule that an injunction will not be granted to stay criminal proceedings, but, as we understand the authorities, this does not mean that an injunction will not lie to prevent prosecution under a criminal

ordinance, or to prevent the threatened enforcement of such criminal ordinance, where the validity of the ordinance is involved. It seems clear from the authorities that in the latter case an injunction will be granted to avoid a multiplicity of suits, to avoid irreparable injury, and that there is no adequate remedy at law where repeated prosecutions will seriously impair or destroy property rights. A court of equity may entertain jurisdiction of a suit to enjoin the enforcement of an alleged invalid statute, for the absence of lawful power to impose the restrictions of the statute may result in irreparable loss to the party concerned; for "jurisdiction" is the power to consider and decide one way or the other, as the law may require. Nolen v. Riechman (D. C.) 225 Fed. 812. In the case of Dobbins v. Los Angeles, 195 U. S. 223, 49 L. ed. 169, 25 Sup. Ct. Rep. 18, the United States Supreme Court uses this language: "It is well settled that, where property rights will be destroyed, unlawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a decree of a court of equity."

In line with and in support of these two authorities may be cited the cases of Ex parte Warfield, 40 Tex. Crim. Rep. 413, 76 Am. St. Rep. 724, 50 S. W. 933; Houston v. Richter, — Tex. Civ. App. —, 157 S. W. 189; Dibrell v. Coleman, — Tex. Civ. App. —, 172 S. W. 550, writ of error denied November 17, 1915; Austin v. Austin City Cemetery Asso. 87 Tex. 330, 47 Am. St. Rep. 114, 28 S. W. 529; Sumner v. Crawford, 91 Tex. 129, 41 S. W. 994; Greene v. San Antonio, — Tex. Civ. App. —, 178 S. W. 6; Booth v. Dallas, — Tex. Civ. App. —, 179 S. W. 301; Sylvester Coal Co. v. St. Louis, 130 Mo. 323, 51 Am. St. Rep. 566, 32 S. W. 649. In the last-cited case the supreme court of Missouri uses the following language: "It is contended that, though it be conceded that the ordinances are invalid, the plaintiffs are not entitled to injunctive relief on the facts stated, for the reason that they have an adequate remedy at law. But is the remedy at law adequate? It must be remembered that the injury complained of here is continuous. The ordinances are continuous, and plaintiffs' business is continuous, and, under the ordinances, for each wagon load of coal sold and delivered in violation of the restrictive provisions thereof, the

plaintiffs each become subject to an action in the municipal courts of the city for such violation. The fact that in each of such suits the plaintiffs might plead successfully the invalidity of the ordinances as a defense thereto does not give them an adequate remedy. They are entitled to be protected from the expense, vexation, and annoyance of such a multiplicity of suits, in consequence of their continuance of a legitimate business, except upon compliance with the condition of ordinances which it is alleged are and may be utterly void."

High on Injunctions, 3d ed. p. 12, says: "The prevention of vexatious litigation and of a multiplicity of suits constitutes a favorite ground for the exercise of the jurisdiction of equity by way of injunction."

Therefore we hold that question No. 1 must be answered in the affirmative.

[2] Second. We think also from the authorities cited, and from the allegations in the petition, to the effect that property rights are involved by the attempted enforcement of ordinances alleged to be invalid because of statutory and constitutional grounds, that this court may properly exercise its jurisdiction: First, to inquire into the validity of the ordinance attacked; and, second, in case it should determine said ordinances to be invalid, to grant the relief prayed for in plaintiffs' petition.

We now come to the consideration of the validity *vel non* of ordinances Nos. 448 and 470. It would seem from the authorities that, since appellants have taken out a license under ordinance No. 448, and have accepted the benefits thereof and operated thereunder, it cannot attack the constitutionality or validity thereof. Young v. Colorado, — Tex. Civ. App. —, 174 S. W. 986; Musco v. United Surety Co. 196 N. Y. 459, 134 Am. St. Rep. 851, 90 N. E. 171; New York v. Manhattan R. Co. 143 N. Y. 1, 37 N. E. 494; Pierce v. Somerset R. Co. 171 U. S. 641, 43 L. ed. 316, 19 Sup. Ct. Rep. 64.

In the case of Pierce v. Somerset R. Co. 171 U. S. 641, 43 L. ed. 316, 19 Sup. Ct. Rep. 64, the United States Supreme Court said: "A person may by his acts or omissions to act waive a right which he might otherwise have under the Constitution of the United States as well as under a statute."

In the case of Musco v. United Surety Co. 196 N. Y. 59, 134

Am. St. Rep. 851, 90 N. E. 171, the surety company became a surety for one Ferrara on a bond given under and by virtue of an act of the New York legislature regulating the taking of deposits by persons, firms, or corporations engaged in the selling of steamship or railroad tickets, etc. Suit was brought by plaintiff against defendant surety company under said act, and from an order overruling a demurrer to the complaint it appealed to the court of appeals for New York urging the unconstitutionality of the statute. The court says: "The appellant, as surety, having executed an undertaking in accordance with the provisions of said act with and for a person engaged in receiving deposits as aforesaid, in this action brought in behalf of persons who made deposits with the principal after such undertaking was executed, which have not been accounted for, defends on the ground that said act is unconstitutional. . . . We are of the opinion that these contentions cannot prevail; that, in the first place, the appellant is debarred from making them."

In Young v. Colorado, — Tex. Civ. App. —, 174 S. W. 986, this court, speaking through Associate Justice Dunklin, used the following language: "It is also well settled that a person may by his act, or omission to act, waive a right which he might otherwise have under the provisions of the Constitution. 8 Cyc. 791, 792."

In the case of Mellen Lumber Co. v. Industrial Commission, 154 Wis. 114, L.R.A.1916A, 374, 142 N. W. 187, Ann. Cas. 1915B, 997, the supreme court of Wisconsin held that appellant, by electing to come under the workmen's compensation act of that state, was thereby precluded from objecting to its constitutionality, saying: "The argument that the provision under discussion is violative of the 'due process of law' clause of the Federal Constitution cannot prevail. It was optional with the appellant to come in under the compensation act or to stay out. It elected to take the former course. It accepted the provisions of the act as they were, the burdens as well as the benefits, and so long as it remains under the law it must take the statute as it finds it,"—citing a number of cases.

But, inasmuch as the main contention of the appellants is predicated upon the provisions of ordinance No. 470, which amended §§ 1, 2, and 5 of ordinance No. 448, we are probably

not required to so declare the law as set forth in the authorities cited.

[3] Said ordinance No. 470 is quite lengthy, and therefore we will not attempt to set it out in full, but only mention the provisions which seem to be directly involved in the consideration of the questions presented by plaintiffs' petition. In § 1, subdiv. "b," it defines the words "motor bus" as meaning and including "any automobile, automobile truck, or trackless motor vehicle engaged in the business of carrying passengers for hire within the city limits of the city of Ft. Worth, which is held out or announced by sign, voice, writing, device, or advertisement to operate or run, or which is intended to be operated or run, over a particular street or route or to any particular or designated point, or between particular points, or to within any designated territory, district, or zone."

Section 2 requires any person desiring to operate such motor bus within Ft. Worth to file with the city secretary thereof an application in writing, giving certain information, including the type of the motor car or motor bus, the horse power thereof, the factory number, the county license number, the seating capacity, the name and age of each person to be in the immediate charge thereof as driver, whether such proposed driver uses drugs, intoxicating liquors, or has been convicted of violating any traffic ordinance of the city of Ft. Worth, the termini between which such motor bus is to be operated, the street or streets over which it is to be run, and further provides that upon the filing of such application for license it shall be referred to the city commission, which Board may for sufficient reasons designated in the ordinance refuse to grant said application and issue the license thereunder.

Subdivision "g" of said section provides that no license shall be granted to any person to operate a motor bus within the limits of the city of Ft. Worth except upon the condition that the applicant for such license enter into a bond conditioned as pleaded by plaintiff and hereinbefore set out. Said subdivision further requires that individuals offered as sureties comply with certain requirements of proof establishing their solvency, that the Board of Commissioners may require a new bond or additional bond from any licenseee whenever the bond approved, or

surety thereon, is by the Board deemed insufficient, or when such bond shall have been decreased in amount by recovery thereon. The license issued under the provisions of this act is required to designate the route or termini along which or between which the said motor bus is to operate.

Section 5 provides the rules of operation of a motor bus and penalties for the violation thereof, and, among other things, prohibits such motor bus from remaining standing upon any street for the purpose of loading or unloading passengers, except it be brought as near as possible to the right-hand curb of said street; from driving or operating a motor bus without the city license number being displayed on the rear of said bus. It requires, further, that a sign or painting showing both the destination and the route of same be prominently displayed on and attached to said motor bus. It prohibits persons from riding on the running boards or fenders, or to occupy any other place thereon outside of the body thereof while such motor bus is in operation, and limits the number of passengers which may ride in the front with the driver, and limits and fixes the number of hours each day in which said motor bus must be operated, except as to Sundays, and in case of accidents, breakdowns, etc., fixes the speed at 12 miles per hour in the business section of Ft. Worth, and 18 miles per hour in the residence section of Ft. Worth at which motor bus may be operated, prohibits the running of said car between sundown and sunup without lights, and prohibits racing with any other motor bus, or driving rapidly to pass one in order to be first to any prospective passenger or anyone waiting for another motor bus or other conveyance, etc. It further provides that each and every day's violation of any provisions of the ordinance shall constitute a separate offense, and that one so violating shall be guilty of a misdemeanor, and shall be punished by fine not exceeding $200, and that in case of conviction of the owner or operator under such ordinance the commissioner of fire and police shall report the same to the Commissioners, together with his recommendation, and that the Commissioners shall consider and act upon said recommendation, and may revoke or suspend such license if they deem it proper.

Under chapter 5, § 1, of the city's charter, the exclusive power and control of the streets is given to the Board of Commissioners,

and under § 2 of said chapter power is vested in said Board, by ordinance or otherwise to regulate within the limits of said city the "speed of locomotives, trains, street cars, vehicles, and animals." By chapter 9, § 3, the power to abate all nuisances is lodged in the Commissioners, and under § 18 the authority to prohibit and restrain or regulate the use of vehicles, bicycles, automobiles, or any other conveyance. Under chapter 11, § 8, the authority is vested in the Commissioners to regulate and fix the fares, tolls, and charges of all street railways, public carriages, hacks, and vehicles of every kind; under § 13 of said chapter to provide for license fees, police tax, and surveillance of drivers and owners of vehicles of every kind; and under § 4 of the same chapter said Board is vested with general police powers to enact and enforce ordinances necessary to protect the health, life, and property, and to prevent and summarily abate and remove nuisances of all kinds and description, and to preserve and enforce the good government, order, and security of said city, and of its inhabitants, and have and enjoy general police powers of a city.

There are other provisions of the charter which might be mentioned as affecting the authority of the city sought to be exercised in this instance, but sufficient has been noted for the purposes of this opinion.

We do not think because the fee for the operation of a motor bus is placed at $10, while the license fee for taxicabs and other rent cars is only $3, and there is no license fee required for the operation of the street railway mentioned, and, further, that said ordinance requires the execution of a surety bond in the sum and terms mentioned, and none is required either for the taxicabs and other rent cars or for the street railway, make said ordinances obnoxious to the provisions of article 1, § 3, of the state Constitution, which reads as follows:

"All freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services."

[4] Nor is it the fact that said ordinance attempts to define as a separate class motor buses or jitney cars. As has been said by our supreme court in the case of Supreme Lodge, U. B. A. v.

Johnson, 98 Tex. 5, 81 S. W. 18: The legislature may classify persons, organizations, and corporations according to their business, and may apply different rules to those which belong to different classes." Campbell v. Cook, 86 Tex. 630, 40 Am. St. Rep. 878, 26 S. W. 486; Union Cent. L. Ins. Co. v. Chowning, 86 Tex. 654, 24 L.R.A. 504, 26 S. W. 982; Marchant v. Pennsylvania R. Co. 153 U. S. 389, 38 L. ed. 751, 14 Sup. Ct. Rep. 894; Fidelity Mut. Life Asso. v. Mettler, 185 U. S. 325, 46 L. ed. 922, 22 Sup. Ct. Rep. 662.

As has been said in the case of Nolen v. Riechman (D. C.) 225 Fed. 812: "The presumption is always in favor of the validity of legislation; and, if there could exist a state of facts justifying the classification or restriction complained of, the courts will assume that it existed."

We can readily understand that greater danger may be caused to the public by the operation of numerous motor buses continuously throughout the day, over and along crowded streets filled with congested traffic, and without limitation as to the street or streets, or parts thereof, over which they may operate, than from the operation of taxicabs and other rent cars, which are required to occupy a fixed place or stand when not in operation, and which, when transporting passengers, do not ordinarily run over the streets on which the heaviest traffic exists, or from the operation of a street railway along a fixed track and on steel rails. As is said in Nolen v. Riechman, supra:

"Furthermore, a substantial distinction between the property of the owner of a street railway and that of the owner of a jitney should not escape attention. The former consists of a fixed plant, including rolling stock, which is operative only along tracks provided for the purpose, while that of the latter is fugitive in character, since it is operative through its own power upon any portion of the surface of an ordinary highway. It results that the street railway property is in its nature an indemnity against the consequences of negligence, and so is at least an equivalent for the bond of indemnity which is here resisted by the owner of the jitney."

"It may well have been that the legislature had in mind, when it enacted the statute in question, that those engaging in the business which the act sought to regulate operated vehicles susceptible

of becoming dangerous to the public by the manner of their operation; that they had no fixed track upon which to run, and were at liberty to move over the entire surface of the street; that they had no schedule; that pedestrians had no way of knowing when and where to expect them; that they increased the danger to persons using the street, whether as pedestrians or while boarding or leaving street cars or other vehicles; that they stopped at street crossings, or along the curb between street crossings, to receive and discharge passengers; that very often the driver owns the machine, or at least an equity in it; that many of them are financially irresponsible; that the patrons of such vehicles are composed of men, women, and children; that the vehicles, in the hands of careless drivers, might rush through crowded streets at a dangerous rate of speed, probably without any financial responsibility to their patrons or others upon whom damage might be inflicted by such machines, because of the negligence of the operators. . . .

"There is another distinction that should be noted; it concerns the taxicab. While the jitney and the taxicab are physically the same, yet the services they perform materially differ. The service of the one is designed to accommodate persons traveling along distinct routes and at a rate of fare common to all; but the service of the other is intended for the accommodation of persons whose destinations involve varying distances and lines of travel and presumably at varying prices. The two kinds of service would signify substantial difference in numbers of vehicles needed to meet the respective demands; and so the dangers attending the operation of the jitney presumably would materially exceed those arising in the taxicab service."

[5] Nor do we think that the ordinance discussed is inhibited by the provision contained in § 16, art. 1, of the state Constitution, which prohibits the enactment of any law impairing the obligation of contracts, as claimed by appellants in connection with their plea that they had complied with the requirements of ordinances Nos. 442 and 448, and that, in effect, the enforcement of the provisions of ordinance No. 470 would be an abrogation of the terms of the contract entered into between the city and appellants. It is stated in 8 Cyc. 938: "As a license authorizing a person to practise a profession, or to carry on a particular busi-

ness, is not a contract which vests a right, but merely the grant of a privilege, such a license is not protected by the constitutional prohibition as to the impairment of the obligation of contracts."

In Doyle v. Continental Ins. Co. 94 U. S. 535, 24 L. ed. 148, the United States Supreme Court says: "The correlative power to revoke or recall a permission is a necessary consequence of the main power. A mere license by a state is always revocable."

The application of this well-established principle certainly does not work any deprivation to the appellants, inasmuch as the ordinance provides that those who have paid a license fee under the prior ordinance may have a license granted them under this ordinance for the unexpired term, or, in case the licensee should elect to discontinue the operation of his motor bus, the portion of said fee for the unexpired term will be refunded to him.

[6] Nor do we think that the ordinance is in violation of § 17, art. 1, of the state Constitution, which provides, in part, that "no person's property shall be taken, damaged or destroyed for, or applied to, public use without adequate compensation being made," etc.,—as plaintiffs alleged in their petition.

[7] Nor do we think that it is contrary to § 19, art. 1, of the state Constitution, which provides that "no citizen of this state shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land."

This contention, raised by appellants in their petition, may most pertinently be directed to § 6 of said ordinance, which authorizes the Board of Commissioners, upon a showing that a licensee has been convicted of a violation of a provision of this ordinance, to revoke or suspend such license if it deem proper. It has been held that, where the authority to revoke a license is not given a municipality in its charter, and is not expressly authorized by ordinance, such revocation is not within the powers of the governing officers of such municipality (25 Cyc. 625), though the authority of revocation, it seems, may be presumed by virtue of the charter power to issue the license (Newson v. Galveston, 76 Tex. 559, 7 L.R.A. 797, 13 S. W. 368; Jacksonville v. Ledwith, 26 Fla. 163, 7 So. 885, 9 L.R.A. 69, 23 Am. St. Rep. 558, with notes thereunder).

But § 8 of ordinance No. 448 contains the same provision as

to the power of revocation or withdrawal of license as in § 6 of ordinance No. 470. Plaintiffs had accepted such terms when they applied for license under the older ordinance; hence it would seem that they are not now in a position to complain. 25 Cyc. p. 626, subdiv. "c."

[8] Nor do we think that it can be successfully contended that the ordinance is in conflict with article 8, § 2, of the state Constitution, which provides that "all occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax," etc.

For, in the first place, the license fee therein provided is not in the nature of an occupation tax (Ex parte Sullivan, — Tex. Crim. Rep. —, P.U.R.1915E, 441, 178 S. W. 537; Hoefling v. San Antonio, 85 Tex. 228, 16 L.R.A. 608, 20 S. W. 85); and, in the second place, it is not shown that there is any difference as to the license required of, or in other burdens placed upon, different individuals engaged in the operation of motor buses; and it is only when a discrimination is shown as between members of the same class that this constitutional guaranty may be invoked (State v. Galveston, H. & S. A. R. Co. 100 Tex. 173, 97 S. W. 71; Texas Co. v. Stephens, 100 Tex. 628, 103 S. W. 481).

[9] Nor do we think there is anything in the allegation that by the enforcement of said ordinance there will be the creation of a monopoly of the carrying of passengers in the city of Ft. Worth in favor of the street car company or of the taxicabs and other rent vehicles, and in this respect in violation of § 26, art. 1, of the Constitution. The ordinance itself does not disclose any such intent or purpose on the part of the Board of Commissioners of Ft. Worth, nor does it suggest such a result. In the absence of such a showing, we would not be authorized to indulge in speculation or surmise as to the existence of such motives on the part of the municipal legislative body, or that such result would probably flow from the enactment of said ordinance. It is held that the motive of a legislative body in enacting a law will not be inquired into by the courts. Soon Hing v. Crowley, 113 U. S. 703, 28 L. ed. 1145, 5 Sup. Ct. Rep. 730; Shenandoah Lime Co. v. State, 115 Va. 865, 80 S. E. 753, Ann. Cas. 1915C, 973; Cooley. Const. Lim. 7th ed. 258; 36 Cyc. 1137.

[10] Nor does the fact that the plaintiffs herein are not in a position to comply with the terms and provisions of the ordinance under discussion, of itself, establish the invalidity or unreasonableness of such ordinance. It is true that the provision requiring a surety bond may necessitate the incurrence of an expense which the plaintiffs may not be able to bear, and that therefore they will be required to abandon the operation of their motor buses, but that in itself does not establish the unreasonableness or invalidity of the ordinance. Nor does the fact that plaintiffs will suffer a pecuniary injury by reason of the enforcement of said ordinance even tend to establish the truth of the contention that the ordinance is invalid. As said by Mr. Justice Brewer in the L'Hote Case, 177 U. S. 598, 44 L. ed. 904, 20 Sup. Ct. Rep. 788, cited in Grainger v. Douglas Park Jockey Club, 78 C. C. A. 199, 148 Fed. 513, 8 Ann. Cas. 997: "The truth is that the exercise of the police power often works pecuniary injury, but the settled rule of this court is that the mere fact of pecuniary injury does not warrant the overthrow of legislation of a police character."

In the Jacobson Case, 197 U. S. 11, 49 L. ed. 643, 25 Sup. Ct. Rep. 358, 3 Ann. Cas. 765, Mr. Justice Harlan says: "In every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand."

In the Barbier Case, 113 U. S. 27, 28 L. ed. 923, 5 Sup. Ct. Rep. 357, cited in the same opinion, Mr. Justice Field says:

"Though, in many respects, necessarily special in their character, they [statutory regulations] do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment." U. S. Const. 14th Amend.

[11] In conclusion we desire to say that, so far as we have been able to determine, the ordinance in question was authorized under the general police powers with which the charter vested the

Board of Commissioners, as well as other charter provisions hereinbefore mentioned, and that we cannot say that the ordinance should be held invalid on any of the grounds urged, or that it contains any unreasonable terms and conditions, or is discriminatory in its nature. Therefore we hold that the trial court did not err in denying the continuance of the injunction as prayed for, and the judgment of said court is hereby affirmed.

On Motion for Rehearing.

[12] Counsel for appellants has filed an able and vigorous motion for rehearing, and in it insistently urges that in our original opinion, as well as in the opinions of all the other courts passing upon the jitney ordinances, the courts have overlooked, or at least failed to discuss, a feature which he thinks renders said ordinances discriminatory. It is urged that in the requirement of a surety bond of the jitneys the city can only justify such a provision upon the ground that it will tend to make the jitney operators more careful, exercise greater diligence to avoid injury to the public, but that this duty—*i. e.*, not to negligently or wilfully injure any person upon the streets of the city—is a duty which is no more chargeable upon the jitney operator than upon the driver of a rent car or taxicab, or upon an individual who is not operating his car for hire; that the conditions, in this respect, under which the several classes of motor-propelled vehicles operate upon the streets are the same; that the same driver may during a part of the day operate the jitney, and during another part of the day drive a private car or a rent car; that the public is no more subject to injury from the same driver's operation of a jitney in the forenoon than from his operation of a car other than the jitney in the afternoon; that his duty in this respect is no greater in the forenoon than in the afternoon; that the rule is that the same obligations or restrictions must be imposed upon all persons similarly conditioned in reference to the duty regulated. He cites in support of his contention the case of Gulf C. & S. F. R. Co. v. Ellis, 165 U. S. 150, 41 L. ed. 667, 17 Sup. Ct. Rep. 255, a suit involving the validity of a Texas statute, passed April 5, 1889, providing that a plaintiff whose claim, under $50 for stock killed by a railway company, which had not been paid within thirty days, should be entitled, in a suit, and upon estab-

lishing his claim, to recover reasonable attorneys' fees, not to exceed $10. The Texas supreme court had held this act valid, but the United States Supreme Court, in reversing our state court upon this feature, said in part as follows:

"Considered as such [as a whole], it is simply a statute imposing a penalty upon railroad corporations for a failure to pay certain debts. No individuals are thus punished, and no other corporations. The act singles out a certain class of debtors, and punishes them when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other debtors. . . . It is, of course, proper that every debtor should pay his debts, and there might be no impropriety in giving to every successful suitor attorneys' fees. Such a provision would bear a reasonable relation to the delinquency of the debtor, and would certainly create no inequality of right or protection. But before a distinction can be made between debtors, and one be punished for a failure to pay his debts, while another is permitted to become in like manner delinquent without any punishment, there must be some difference in the obligation to pay, some reason why the duty of payment is more imperative in the one instance than in the other. . . . That such corporations may be classified for some purposes is unquestioned. The business in which they are engaged is of a peculiarly dangerous nature, and the legislature, in the exercise of its police powers, may justly require many things to be done by them in order to secure life and property. Fencing of railroad tracks, use of safety couplers, and a multitude of other things easily suggest themselves. And any classification for the imposition of such special duties—duties arising out of the peculiar business in which they are engaged —is a just classification, and not one within the prohibition of the 14th Amendment."

We do not believe our holding in the instant case and the holding of the other courts cited in jitney cases fails to measure up to the principle laid down in the Ellis Case. If we are correct in concluding from the facts submitted that the operation of the jitney on the crowded streets of a city is a business peculiarly dangerous to the public using the streets, then the fulfilment of the duty of care on the part of the operators is more important than the performance of such duty in the case of one only occa-

sionally or infrequently driving a car over said streets. The danger is more imminent and frequent, and might be said to be continuous. Therefore, in the exercise of its police powers, a city may require of the jitney operators a further guaranty than it does of others that he will avoid acts of negligence, and that, in case of an accident, certainly more likely to occur than in the case of operators of other motor vehicles mentioned, he will be in a position to respond for the damage inflicted.

In St. John v. New York, 201 U. S. 633, 50 L. ed. 896, 26 Sup. Ct. Rep. 554, 5 Ann. Cas. 909, a case in which the court was dealing with the question of alleged discrimination between producing and nonproducing venders of such article, it being contended that such law was discriminatory, for the reason that nonproducing venders might not exempt themselves from actions or penalties for violations of certain subdivisions of said act by showing that the milk sold or offered for sale by them was in the same condition as when it left the herd of the producer, a privilege accorded to producing venders, the United States Supreme Court, after stating that the purpose of the law was to secure to the population milk containing a certain standard of purity and strength, and to disclose other milk unclean, impure, unwholesome, etc., continued: "It is not contended that such purpose is not within the power of the state, but it is contended that the power is not exercised on all alike who stand in the same relation to the purpose, and quite dramatic illustrations are used to show discrimination. A picture is exhibited of producing and nonproducing venders selling milk side by side; the latter, it may be, a purchaser from the former; the act of one permitted; the act of the other prohibited or penalized. If we could look no farther than the mere act of selling, the injustice of the law might be demonstrated, but something more must be considered. Not only the final purpose of the law must be considered, but the means of its administration,—the ways it may be defeated. Legislation, to be practical and efficient, must regard this special purpose, as well as the ultimate purpose."

We feel that the language of the Supreme Court, as above quoted, is sufficient answer to appellants' contention.

It might be well to state that, though the jitney legislation is of recent origin, yet the question of the validity of ordinances simi-

lar to the one under consideration has reached the courts of last resort, both of civil and of criminal jurisdiction, in many of the states, and, in no case, so far as we have found from our examination, has the court sustained the contention of invalidity.

In addition to the cases cited in our original opinion we might cite Memphis v. State, — Tenn. —, L.R.A.1916B, 1151, P.U.R. 1916A, 825, 179 S. W. 631; Ex parte Bogle, 179 S. W. 1193, by the Texas court of criminal appeals, decided November 3, 1915, not yet officially published; LeBlanc v. New Orleans, 70 So. 212, decided by the Louisiana supreme court November 29, 1915. In these cases ordinances with similar or more onerous provisions have been upheld.

Believing that in our original opinion we correctly disposed of all the issues involved, the motion for rehearing is overruled.

Note.—Public Necessity.

In Re Highway Transport Co. Decision No. 6900, Application No. 4894, Dec. 5, 1919, the California Commission held that the mere desire of an applicant to enter the field as a common carrier of freight or passengers is not a sufficient or a conclusive showing that public necessity warrants such additional service, the applicant being required to show that the existing facilities are inadequate, and that there is a public demand for the proposed service. (P.U.R. 1921C, 719.)

TEXAS COURT OF CIVIL APPEALS.

GILL et al.

v.

CITY OF DALLAS et al.

[No. 8185.]

(— Tex. Civ. App. —, 209 S. W. 209.)

Automobiles — State and municipal regulation — Jitneys.

1. A city ordinance regulating jitneys is not repugnant to a general state highway law regulating the operation of motor vehicles, including registering, licensing, etc., where the statute reserves to the

local authorities the right to license and regulate the use and operation of vehicles for hire.

Constitutional law — Jitney ordinance — Monopolies.

2. An ordinance forbidding the operation of jitneys within a certain district does not, in violation of the Texas Constitution, create a monopoly in favor of street railways operating therein.

Constitutional law — Jitney ordinance — Just compensation — Due process.

3. An ordinance forbidding the operation of jitneys within a specified district in a city does not take property without due compensation or without due process of law, although the owners are operating under municipal license; since licenses are revocable at will.

Constitutional law — State's right of government — Municipal ordinance — Jitneys.

4. The exercise by a municipality of its statutory authority to regulate jitneys does not violate a provision of a state Constitution, declaring the state to be free and independent. and that the maintenance of free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government unimpaired.

Constitutional law — Delegation of power.

5. The exercise by a city of its statutory right to regulate jitneys is not an attempted exercise of the legislative power in violation of the Texas Constitution; since such power may be delegated.

[February 8, 1919.]

APPEAL from District Court, Dallas county, E. B. Muse, Judge, from a judgment for the defendant in an action by D. H. Gill and others against the city of Dallas and others; affirmed.

Appearances: William H. Clark, of Dallas, for appellants; A. S. Hardwicke and Lawther & Pope, all of Dallas, for appellees.

Rasbury, J.: This is an appeal from the action of the trial judge in sustaining exceptions to the sufficiency of appellants' petition and refusing an interlocutory injunction restraining appellee *pendente lite* from the enforcement of an ordinance affecting appellants' right to operate motor busses, or jitneys, over and upon the streets of Dallas.

After properly alleging appellants' right to maintain the suit, and that appellee was a municipal corporation by authority of

special act of the legislature and amendments thereto, the petition alleged, in substance, the following material facts: Prior to and on January 5, 1917, appellants and many others were, under existing ordinances, licensed by appellee to operate motor busses or jitneys upon the public streets of Dallas, and were so engaged at that time. On that date appellee, by its mayor and board of commissioners, enacted another ordinance declared to be for the purpose of regulating the operation of such vehicles, and repealed all former ordinances in that respect. On January 11, 1917, appellants and others affected thereby attacked the validity of said ordinance by suit in the district court. Upon hearing in the district court the ordinance was for various reasons declared void, and hence unenforceable, and the appellee and its officers perpetually enjoined from attempting to enforce same. On appeal to this court the ordinance was held valid, the judgment of the district court reversed, and the injunction dissolved. Dallas v. Gill, — Tex. Civ. App. —, 199 S. W. 1144. On May 5, 1918, the supreme court of Texas in said case denied application for writ of error (202 S. W. xvi.), and on June 12, 1918, denied motion for rehearing. On June 29, 1918, the chief justice of this court granted a writ of error to the Supreme Court of the United States, but refused to supersede the judgment of this court. On July 30, 1918, one of the associate justices of the Supreme Court of the United States ordered the judgment stayed until further orders upon the giving of bond, etc. The bond was filed in this court August 2, 1918, whereupon those engaged in the jitney service resumed the business. Matters so standing, the city of Dallas, through its mayor and board of commissioners, on August 2, 1918, enacted another ordinance entitled "An Ordinance Regulating Local Street Transportation in the City of Dallas." Local street transportation was variously defined, and included vehicles which transported passengers for hire over the streets without previous agreement, ordinarily upon regular routes, and being the kind of service usually furnished by jitneys in competition with a street railway service, which included the vehicles or jitneys operated by appellants, and excluded from its provisions all motor vehicles engaged in local street transportation which made trips under special

employment, and which remained in and upon private premises or legally authorized stands or garages when not so engaged. It was declared unlawful for any person, firm, corporation, association, partnership, or society to engage in the street transportation so defined within a defined district. The district or zone from which such vehicles were excluded is a wide, irregular circle around the heart of business center of the city. All former ordinances in conflict with the new act were repealed. Any person convicted for violating the ordinance is subject to fine of not less than $25 nor more than $200, every single passenger transported within the prohibited territory constituting a separate offense. The ordinance declared that due to the great confusion and congestion upon the city streets for lack of sufficient traffic regulations, and due to the great public necessity for the protection and preservation of public peace, health, and safety, an emergency was created authorizing the immediate passage of the ordinance, which was accordingly done. After the enactment of the ordinance the present suit was commenced for the purpose, as we have said, of restraining its enforcement. The grounds upon which the relief was sought are numerous, and are reflected in the assignments of error presently to be considered, and in connection with which we will recite any further fact alleged in the petition necessary to a fair and correct determination of the issues.

[1] Under authority of the first assignment of error it is contended that the ordinance is void because in conflict with and repugnant to recent acts of the legislature creating a state highway department (Gen. Laws Reg. Sess. 35th Leg. chap. 190, p. 416), and regulating the operation of motor vehicles (chapter 207, p. 474, Gen. Laws Reg. Sess. 35th Leg.). The general purpose of the state highway department act is to authorize the commissioners therein provided for to formulate plans and policies for the location and construction of a comprehensive system of state public roads, and to provide the necessary funds with which to effectuate that purpose, by requiring every character of motor vehicle in use in the state to register with the department, pay the fee or tax fixed by the act, depending upon the carrying

capacity of the cars, etc., and receive a license from the department. The act regulating the operation of motor vehicles has for its general purpose that which is indicated by its title, including the registration, licensing, and identification of motor vehicles and persons operating them, and prohibiting their operation by others, prescribing traffic regulations upon the state highways, and limiting local authorities in the enactment of laws in conflict with the act, providing for its enforcement, and affixing penalties for its violation. While the provisions of both acts are numerous, none of them, in our opinion, affect the present controversy, save those immediately cited. By § 16 of the act (Vernon's Anno. Civ. Stat. Supp. 1918, art. 7012½) creating the state highway department it is provided, in substance, that, in order to provide funds to effectuate the purpose of the act, every owner of one or more motorcycles or motor vehicles shall register same in the manner directed by the act, accompanying his application for registration by the required fee. Section 17 provides that, upon receipt of application for registration and the prescribed fee, certificate or license card shall be issued identifying the vehicle and owner, etc., together with a metal seal, to be conspicuously displayed upon the radiator of the car. Section 25 (art. 7012½h) declares, in substance, that the registration certificate and license fees provided for in the act shall be in lieu of all similar requirements by any county, municipality, or other political subdivision of the state, which are forbidden to impose similar burdens upon such vehicles, save that incorporated cities and towns shall retain the right "to license and regulate the use of motor vehicles for hire." Section 27 (art. 7012½i) repeals all laws in conflict with the act. By § 23 of the act regulating the operation of motor vehicles it is provided, among other matters, that the speed regulations therein fixed shall be exclusive of all similar regulations fixed by any political subdivision of the state, save that such political subdivisions may pass ordinances or regulations for the purpose of establishing orderly passage of vehicles upon highways or portions thereof where traffic is heavy and continuous, and except that "the powers now or hereafter vested in local authorities to license and regulate the operation of vehicles offered to the public for

hire . . . shall remain in full force and effect, and all ordinances, rules, and regulations which have been, or which may be, hereafter enacted in pursuance of such powers shall remain in full force and effect."

The foregoing are the provisions upon which appellants' claim of conflict and repugnancy is founded. With such provisions they had complied, and were licensed by the state of Texas at the time the ordinance was enacted, and entitled to all the privileges contemplated thereby. Counsel argues that it was clearly the purpose and intention of the legislature in enacting such laws to assume exclusive control of the operation, taxation, and licensing of every character of motor vehicle, including those defined by the ordinance, upon the highways of the state, which includes city streets, and that when licensed by said act owners of such vehicles were entitled to operate same for any and every lawful purpose over and upon any city street within the state, without any right in municipal government to interfere with them in the manner attempted by the ordinance under construction. We cannot agree with the contention. While it may not be denied that the acts of the legislature clearly evidence a purpose to assume, in a large sense, exclusive control of motor vehicles, it with equal clearness evidences, in our opinion, an intention to reserve to municipalities a similar control in certain particulars. The taxing power is one of the exclusive rights assumed by the state, as is evidenced by § 16 of the State Highway Department Act, which requires every motor vehicle to register and pay the required fee to the state, and § 25 of the same act, which prohibits other political subdivisions of the state from imposing similar burdens. When said fees are paid and the other provisions of the act complied with the owners' right to travel the public highways, including the city streets, in the usual and ordinary way, will not be disputed. At the same time it appears with equal clearness from said § 25 of the State Highway Department Act, and from § 23 of the Act Regulating the Operation of Motor Vehicles, that certain powers upon the subject were by the legislature expressly reserved to the local authorities of the political subdivisions of the state. The power reserved in said § 25 is "to license

and regulate the use of motor vehicles for hire," while that reserved in said § 23 is "the power now or hereafter vested in local authorities to license and regulate the operation of vehicles offered to the public for hire." It is of consequence here to note that there is a wide distinction between the incidental transaction of business in the exercise of the right to travel the public highways in the ordinary way and the right to use such highways as a place upon which to conduct business. While the right to use public highways for ordinary travel or use, and incidentally the transaction of one's business, is a common privilege of the public, the right to use such highways upon which to conduct business, or to put such highway to some peculiar, special, or exceptional use, in order to conduct or maintain business thereon, is always subject to the will of the state or the political subdivisions thereof to which such power has been delegated. It is, of course, a well-settled and generally accepted rule that municipalities may not prohibit occupations or businesses lawful under general laws, though, generally speaking, they may license and regulate under authority of legislative grant. Whether one in pursuit of a lawful business or occupation may put the public highways to a peculiar or exceptional use—that is to say, conduct his business exclusively thereon—is a widely different matter. Certainly, the citizen has no common or inherent right in that respect. The state or the city, when the power is delegated, clearly may grant such privilege, or may refuse it, and thereby prohibit the use of the street. Occupations or business conducted wholly upon the public highway are enjoying mere privileges, which may be revoked or denied by the local authorities whenever the health, peace, or safety, of the general public warrant it. The rule is founded in reason and justice, and is supported by decisions and texts, many of which are cited in Ex parte Parr, — Tex. Crim. Rep. —, 200 S. W. 404. The provisions cited from the acts relate, not to the right to regulate the public in the usual and ordinary travel upon the public highways, but the right to regulate the operation and use of vehicles for hire. The provisions are in both measures, and their insertion was obviously studied and deliberate in the light of the comprehensiveness of the measures. Their meaning is clear, unambiguous, and leaves nothing

to construction, and means no less than that cities are permitted to regulate the use and operation of vehicles upon their streets for hire, which is but to say that they may regulate and license the conduct of local transportation upon their streets as attempted by the ordinance, and which it occurs to us is a precise exercise of the power reserved to them by the act. If it was not intended to reserve to cities the regulation of the business in which appellants seek to engage, then the reservation is surely meaningless, since the business is purely the offering to the public of motor vehicles for hire. We accordingly conclude that there is neither conflict nor repugnancy in the provisions of the legislative acts and the ordinance.

It is also contended that the ordinance is void because in violation of § 28, art. 1, Const., which, in substance, reserves to the legislature only the power to suspend laws, and because in violation of article 1096a, Vernon's Sayles's Anno. Civ. Stat. (Tex.) and art. 2, § 1, subd. 2, of the city charter, forbidding, respectively, the grant to cities of power to pass ordinances inconsistent with the Constitution or general laws of the state, or the exercise of such power by cities. The foregoing contention depends obviously upon the assumption that the ordinance is in conflict or repugnant to the State Highway Department Act or the Act Regulating the Operation of Motor Vehicles. As a consequence, if we are correct in our conclusion on that issue such contention is without force.

[2] It is also contended that the ordinance is void because in violation of §§ 1 and 26, art. 1, Const., forbidding monopolies, the precise point being that the ordinance, by abolishing jitneys, creates a monopoly in favor of the street railways. In connection with the issue so presented it is alleged in the petition that it was the purpose of appellees' officers to abolish and prohibit the operation of jitneys in the city of Dallas by the enactment of the ordinance complained of, and that such was its effect. The allegation is to be accepted as a fact unless the contrary appears from an inspection of the ordinance attached to, and made a part of, appellants' petition. We conclude the effect of the ordinance was to abolish the jitneys, whatever may have been the intention of appellee's officers. We base the conclusion upon the common knowledge we possess concerning the geographical

situation of the zone from which jitneys are prohibited. The zone envelops, as we have said, the business heart of the city. The public obviously would not patronize conveyances that could not reach the business center. As a consequence the use of jitneys is out of the question so far as the convenience of the public is involved. That fact may be conceded, and yet the ordinance, in our opinion, would not be void because it creates a monopoly within the contemplation of the Constitution. Ordinarily, whether persons, firms, or corporations are exercising monopolistic privileges or immunities is determined by the grant, right, or permission under which such persons, firms, or corporations are operating. Under what character of grant the street railways are operating does not appear, but it must be assumed that, since the Constitution forbids grants creating monopolies, no such grant was made. On the other hand, the mere refusal of a municipality to grant a franchise or permission to others who desire to compete with those already in possession of a franchise or permit does not, in our opinion, create a monopoly. Franchises or permits to use city streets by public utilities are not privileges to be granted as matter of course upon the asking. Sufficient public utilities are a great convenience; too many might be an equal inconvenience, to be determined in every case by the local authorities. The convenience, peace, health, and safety of the citizens necessarily determine the number and extent of similar competing utilities which are to be permitted to operate. While none may be given exclusive or monopolistic rights, it does not follow that all are entitled to enter upon the city streets. The officers of municipalities are charged with the responsibility of conserving the convenience of the citizens in such matters, as well as providing for their peace, health, and safety. Whether they have fairly done so is obviously not a judicial question.

[3] It is also contended that the ordinance is void because in violation of §§ 17 and 19, art. 1, Const., and of amend. 14, U. S. Const., because it attempts, as relates to the state Constitution, to take the property and privileges of appellants without either due compensation or process of law, and, as relates to the Federal Constitution, to do so without due process of law. The precise issue urged is that, as alleged in their petition, ap-

pellants under former jitney ordinances, and under the State Highway Department Act, and the act regulating the operation of motor vehicles, were licensed to pursue the business in which they were engaged at the time of the enactment of the ordinance involved in this proceeding, and upon the faith of which they made large investments, of which they will be deprived of the enforcement of said ordinance. If, as matter of fact, investments were so made—and it is to be assumed they were—that fact confers upon appellants no vested right to continue upon the streets, since their use of the streets was the exercise of a mere license, revocable at will of the licensor. Newson v. Galveston, 76 Tex. 559, 7 L.R.A. 797, 13 S. W. 368.

[4] The contention also is made that the ordinance is void for the reason that it violates § 1, article 1, of the Constitution, which declares that, subject to the Constitution of the United States, Texas is free and independent, and that the maintenance of free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired, to all the states. The contention is that the exercise of the powers contained in the ordinance is a denial of that right to the state. While we think the section of the Constitution quoted is a declaration directed against the exercise by the national government of those powers reserved to the states, at the same time if it has application to the state's internal affairs other clauses of the Constitution, as we have noted, authorize the delegation to political subdivisions of the state by the legislature of the functions reserved to it, including the power exercised by the appellee in the ordinance under construction.

[5] It is also claimed that the ordinance is void because it is an attempted exercise of the legislative power reserved to the state by § 1, art. 3, of the Constitution. While all legislative power is reserved to the state, that power may, of course, be delegated to other governmental agencies; and we have heretofore held in a number of cases that the power exercised in the ordinance was delegated to the city of Dallas, and that it was such power as the legislature was authorized to delegate.

Finding no reversible error in the record, the judgment is affirmed.

Affirmed.

UTAH SUPREME COURT.

PUBLIC UTILITIES COMMISSION OF UTAH

v.

PARLEY JONES.

[No. 3340.]

(— Utah, —, 179 Pac. 745.)

Commissions — Jurisdiction — Highways — What constitutes.

1. In an action by the Utah Commission against the owner of automobiles operating without the permission of the Commission, it is unnecessary for the Commission, in order to make out a prima facie case, to introduce testimony to show dedication of the roads over which the cars are being operated, or the filing by the county commissioners of Salt Lake county of a plat with the county clerk, designating the roads as public highways; or to do more than to show their general use by the public for travel.

Note.—In Re Lyman, P.U.R.1919B, 101, Nov. 20, 1918, the Utah Commission refused to grant permission for the operation of a public stage line without limitation as to the time of arrival or departure at any point, and without specified termini.

The Commission also held that the fact that it may sometimes be convenient to call upon a local man for special trips, does not justify a Commission in authorizing him to compete with an existing automobile stage line, in a territory which at best yields only comparatively small revenues for the existing service. The Commission declined to assume the responsibility of insisting upon the present transportation company giving a daily passenger service to the residents of the territory without at the same time protecting its revenues to the extent of making its operation self-sustaining. In other words, it could not compel a company to give service at a loss, nor did the Commission feel justified in allowing an increase in fares and charges that would be necessary to compensate for the loss of revenue that would result if the traffic handled by the existing company were diminished by competition, since "the duty of the Commission is to regulate the operations of utility companies in such a way as to give the best possible service to the public at reasonable prices."

A corporation was authorized by the Utah Commission to continue motor vehicle service for which an individual had been granted a certificate of convenience and necessity, notwithstanding objections that the Commission had no power to transfer a certificate of convenience and necessity from an individual to a corporation. Re Wedgwood (Utah) P.U.R.1922C, 170.

Estoppel — Public highways — What constitute — Admission in answer.

2. A claim, in an answer of one proceeded against by a Commission for the operation of automobiles without permission, of the right to use the highways by virtue of the issuance of a certificate of convenience and necessity to another, estops him from asserting them to be other than public highways, especially as against the Commission seeking to serve the interests of the public by exercising jurisdiction over them.

[March 19, 1919.]

APPEAL from District Court, Salt Lake County, Harold M. Stephens, Judge, from a nonsuit in a proceeding by the Utah Public Utilities Commission against Parley Jones to enjoin him from the operation of an automobile stage line; reversed and remanded.

Appearances: Dan B. Shields, Attorney General, and O. C. Dalby and Herbert Van Dam, Jr., Assistant Attorneys General, for appellant; King, Straup, Nibley, & Leatherwood, of Salt Lake City, for respondent.

Corfman, Ch. J.: The plaintiff, the Public Utilities Commission of Utah, hereinafter referred to as the Commission, commenced this action in the district court of Salt Lake county to enjoin the defendant from operating an automobile stage line carrying passengers for hire over certain routes or roads between Bingham Canyon and the Highland Boy mine and between Bingham Canyon and Copperfield, in Salt Lake county.

The complaint, in substance, alleged: That on the 2d day of July, 1918, one Eugene Chandler filed with the Commission his petition in writing for leave to operate an automobile stage line between Bingham Canyon and the Highland Boy mine and between Bingham Canyon and Copperfield, and that on July 30, 1918, after public hearing on said petition, an order was made by the Commission granting unto the said Eugene Chandler a certificate of convenience and necessity to establish an automobile stage line route between said points, over certain public streets, roads, and highways in Salt Lake county, and authorizing said Eugene Chandler to operate the same for the transportation of passengers between said places; that no other person, company, corporation, or association has been granted a certificate of convenience and necessity or has been authorized to operate a stage

line or carry passengers between said points, and that no other person, company, corporation, or association has filed with the Commission a schedule of rates, fares, charges, or classifications, or caused the same to be published; that the defendant, disregarding the order so made by the Commission, has undertaken to, and now does, operate an automobile stage line for the purposes aforesaid, over said routes so established by the Commission without any authorization from the Commission, and that the defendant, disregarding the frequent requests and demands to cease such operation, refused to desist therefrom.

The answer, in substance, admits the order was made by the Commission permitting Chandler to operate the automobile stage line for hire, and denies generally the other allegations of the complaint. The answer also affirmatively alleges that on or about July 2, 1918, Eugene Chandler and the defendant were operating auto stages for hire over said routes, and that said Chandler requested the defendant to permit him, the said Chandler, to get a permit in his own name from the Commission, and agreed that they would thereafter operate the autos owned by said Chandler and the defendant together over said routes; that it was in pursuance of such an understanding on the part of the Commission, as well as on the part of said Chandler, and the defendant, that said permit was applied for and issued; that since the issuance of the said permit the said Chandler has refused to enter into any copartnership arrangement for the operating of said auto stage lines, and the said Chandler has instigated this suit for the purpose of preventing defendant from operating his autos and participating in the profits to be derived from operating such stages over said routes.

Trial was to the court. At the conclusion of the testimony on behalf of the Commission defendant moved for and was granted a nonsuit upon the ground that it was requisite to prove, and the evidence failed to show, the existence of a public highway, as defined by the Utah statutes, between the points designated in the complaint. Briefly stated, the Commission contends that the granting of the nonsuit was error for the following reasons:

(1) That the defendant was estopped by his own pleadings from denying that the roads in question are public highways.

(2) That the routes in question were sufficiently proved as public highways for the purposes of this case.

The record shows it to be an admitted fact that on July 2, 1918, an order was made by the Commission granting to the said Eugene Chandler a certificate of convenience and necessity to operate a stage line between the points mentioned. The testimony in behalf of the Commission further shows beyond any dispute that the routes or roads mentioned in the complaint between the points designated then were, and had been for many years, in general use by the public, and that there are no other roads or routes between said points. The testimony for the Commission is also conclusive, and the facts are admitted, that while the roads have been from time to time, at certain places, changed, a continual passageway has always been open, maintained, and extensively used for public travel between the designated points. The testimony also shows that since the issuance of the permit by the Commission to Chandler the defendant has used these roads in operating autos for hire over them, making as many as ten or twelve trips in a day; that the defendant had made no application for a certificate of necessity and convenience for leave to operate an automobile stage line between the designated points, nor had he ever filed a schedule of rates or fares to be charged by him over said routes.

[1] Defendant contends, and the trial court ruled in nonsuiting the Commission, that there was a failure of proof on the part of the Commission for the reason that it failed to establish by the evidence that the roads in question have been created or established public highways within the meaning and as required by the statutes of our state.

"Highways" are defined by Utah Comp. Laws 1917, § 2800, as follows: "In all counties of this state, all roads, streets, alleys, lanes, courts, places, trails, and bridges laid out or erected as such by the public, or dedicated or abandoned to the public, or made such in actions for the partition of real property, are public highways."

Section 2801 provides: "A highway shall be deemed to have been dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of ten years."

Section 2808 reads: "It shall be the duty of the board of county commissioners in each county . . . to determine all public highways existing in its county and to prepare plats and specific descriptions of the same . . . which shall be kept on file in the office of the county clerk."

The Commission in the case at bar failed in its effort to prove a dedication as provided for in § 2801, supra, and also failed to produce a plat designating the roads in question as public highways in accordance with the provisions of § 2808, supra.

Let it be conceded that the Commission failed in its proof to meet the requirements of the sections of our statutes above cited; the question then arises: Is not the Commission entitled under the showing made to the relief prayed for in its complaint?

The attorney general contends that, for the purpose of exercising the powers of the Commission, the statutory definition of public highways and the statutes providing as to how highways may be dedicated or created do not apply, but rather the rule of law relative to public highways in general should be invoked, citing 13 R. C. L. p. 17, § 5, where the general rule is stated thus: "The term 'public highway,' in the broad ordinary sense, covers every common way for travel by persons on foot or with vehicles rightfully used on highways, which the public have the right to use either conditionally or unconditionally, and thus may include turnpike and toll roads, lanes, pent roads, cross-roads, and even railroads and platform approaches thereto, and street railways. When appearing in a general law, it will ordinarily be regarded as having been used by the legislature in its general sense. In a limited sense, however, the term means a way for general travel which is wholly public, and it may be restricted to this sense by the subject-matter of the statute in which it is employed. A railroad is not a public highway in the strict or limited sense of the term."

The rule is similarly stated by Elliott in his work on Roads & Streets, vol. 1, p. 4, § 3, as follows: "If a way is one over which the public have a general right of passage, it is, in legal contemplation, a highway, whether it be one owned by a private corporation or one owned by the government, or a governmental corporation, and whether it be situated in a town or in the country. No matter whether it be established by prescription or by

dedication, or under the right of eminent domain, it is a highway if there is a general right to use it for travel. The mode of its creation does not of itself invariably determine its character; for this, in general, is determined by the rights which the public have in it."

See also Weirich v. State, 140 Wis. 98, 22 L.R.A.(N.S.) 1221, 121 N. W. 652, 17 Ann. Cas. 802; Riley v. Buchanan, 116 Ky. 625, 63 L.R.A. 642, 3 Ann. Cas. 788, 76 S. W. 527; Northwestern Teleph. Exch. Co. v. Minneapolis, 81 Minn. 140, 53 L.R.A. 175, 83 N. W. 527, 86 N. W. 69; Walton v. St. Louis, I. M. & S. R. Co. 67 Mo. 56; Neff v. Reed, 98 Ind. 341; Northern C. R. Co. v. Com. 90 Pa. 300; Pittsburgh, M. & Y. R. Co. v. Com. 104 Pa. 583; Dodge County v. Chandler, 96 U. S. 205, 24 L. ed. 625; Craig v. People, 47 Ill. 487; Patterson v. Munyan, 93 Cal. 128, 29 Pac. 250; Mead v. Topeka, 75 Kan. 61, 88 Pac. 574.

Bearing in mind that among the very objects and purposes of our legislature in creating a Public Utilities Commission, as declared by legislative enactment, was to provide for the safety, comfort, and convenience of the public travel at reasonable rates, we have no hesitancy in saying the position taken by the attorney general in the case at bar is the correct one, and that the statutory definition of "public highway," relating to the roads over which the Commission may exercise jurisdiction, should be applied in its broadest sense. Utah Comp. Laws 1917, § 5848, prescribing rules for construction of statutes, provides: "In the construction of the statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the statute. . . ."

It is then provided by subdivision 15 of this statute that the words, "highway" and "road," include public bridges, and may be held equivalent to the words, "county way," "county road," "common road," and "state road."

It is quite apparent from § 5848, supra, that the definitions expressly given in our statutes with reference to roads, highways, etc., were for the purpose of so defining in order to fix the duties and responsibilities of local officers and authorities with respect to their right to supervise and control the roads, rather

than that the terms should always be employed and used in the restricted sense contended for in this case by the defendant. We think the construction contended for by defendant is wholly inconsistent with the manifest intent of the legislative act creating a Public Utilities Commission and prescribing its powers and jurisdiction.

Section 4782, subd. 13, of the act, defines: "The term 'automobile corporation,' when used in this title, includes every corporation or person . . . engaged in, or transacting the business of, transporting passengers or freight, . . . for compensation, by means of automobiles or motor stages on public streets, roads or highways along established routes within this state."

Subdivision 14 provides: "The term 'common carrier,' when used in this title, includes every . . . automobile corporation . . . operating for public service within this state; and every corporation or person . . . whatsoever engaged in the transportation of persons or property for public service, over regular routes between points within this state."

Subdivision 28 provides: "The term 'public utility,' when used in this title, includes every common carrier, . . . automobile corporation, . . . where the service is performed for or the commodity delivered to the public or any portion thereof. The term 'public or any portion thereof,' as herein used means the public generally, or any limited portion of the public including a person . . . to which the service is performed or to which the commodity is delivered, and whenever any common carrier, . . . automobile corporation, . . . performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such common carrier, . . . automobile corporation, . . . is hereby declared to be a public utility subject to the jurisdiction and regulation of the Commission and the provisions of this title."

Section 4798 of the act provides: "The Commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, as defined in this title, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically desig-

nated, or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction."

In view of the express purport and meaning of the foregoing provisions of the statute, we do not think it incumbent upon the Commission, in order to make out a prima facie case, to introduce testimony to show dedication of the roads in question, nor the filing by the county commissioners of Salt Lake county of a plat with the county clerk, designating the roads as the public highways of Salt Lake county; nor to do more than to show their general use by the public for travel between the points designated in the pleadings.

[2] Moreover, we think there is much merit in the contention of the attorney general that the defendant, by his answer, while denying the right of the public to use the roads in question, claimed the right to use them by virtue of the issuance to Chandler by the Commission of a certificate of convenience and necessity, and that the law of equitable estoppel, as to him, applies; that the defendant by his affirmative defense pleaded in the answer and in effect admitted that the roads in question were public highways; and that, having asserted them to be such for his own purposes, he should be, and is, estopped from claiming them to be otherwise, more especially as against the Commission seeking to subserve the interests of the general public by exercising jurisdiction over them. As is said in 10 R. C. L. § 19, p. 688: "A person is held to a representation made or a position assumed, where otherwise inequitable consequences would result to another who, having the right to do so under all the circumstances of the case, has, in good faith, relied thereon."

If the constantly changing conditions and routes of the roads of this state from point to point, oftentimes through narrow canyons, over mountain passes, and across deserts, over which the general public travel, were not intended, within the meaning of the legislative act, to be subjected to the jurisdiction and control of the Commission, and held to be public roads and highways within the meaning of the act we have under consideration, the legislature would have expressly said so. The legislature certainly intended that the roads of the state over which the general public concededly have the right to and do travel should be within the jurisdiction and under the regulation and control of

the Commission, whether formally dedicated, accepted, and designated by recorded plats as public streets, roads, and highways in accordance with the general provisions of the statute or not, so long as they may be used by the general public for travel.

We are of the opinion the trial court erred in ordering a nonsuit in favor of the defendant, and therefore it is ordered that the same be vacated, and the case be remanded to the District Court for further proceedings; appellant to recover costs.

Weber and Thurman, JJ., concur.

Frick, J.: I concur. In order to constitute a particular road or highway a public road, and the traffic and travel thereon subject to regulation and control by the Commission, the question is not whether the county or the state has acquired an indefeasible title, easement, or right of way, but the question is whether the particular road or highway is being used by the public generally for travel and traffic and is claimed by the public as a public road or highway, and as such is being used for the purpose of hauling and transporting freight or passengers over it for hire or private gain by those owning and using the ordinary and usual vehicles used on public highways for such purposes. Any road or highway which is thus being used by the public generally is, in my judgment, a public road or highway within the purview of the law, over which the travel and traffic are subject to regulation by the Commission. It might just as well be contended that the Commission may not regulate the traffic over the railroads of a public service corporation because it has not acquired an indefeasible easement, right, or title to every portion of its right of way, as to contend that the Commission may not regulate the traffic and travel over a public highway unless and until the Commission establishes an indefeasible title, easement, or right of way over the entire length of the highway or road on which the public travel and traffic are sought to be regulated. To so hold would, in most instances, defeat the very purpose of the Utilities Act.

In view of the foregoing, I cannot concur in the conclusion that an estoppel has been established. The principle upon which estoppels rest, in my judgment, has no application here.

Gideon, J.: I concur in the order reversing the judgment of

the district court granting a nonsuit. I do so, however, only for the reason that in my judgment the defendant, by his acts, is estopped to deny or question the jurisdiction of the Commission over the route or roadway in question.

Note.—Nebraska.

A classification which distinguishes between bus common carriers and electric train common carriers, is not improper as class legislation; a motor vehicle operator should be required to keep simple but comprehensive books of account; and a motor bus operator who appears to be almost execution-proof should be required to carry a liability insurance policy on each vehicle operated, for the sole protection of passengers. Omaha & L. R. & Light Co. v. Henry (Neb.) P.U.R.1922B, 66.

A motor bus operator competing with an interurban railway was ordered to refrain from driving on interurban or street railway tracks or near enough to obstruct clearance of electric cars, except when traffic conditions on the highway made it temporarily unavoidable and excepting further the distance and time necessary to take on and unload passengers; and he was further ordered to give proper clearance to electric railway cars when crossing tracks, and to give right of way to such cars. Safety as well as fair competition made such an order necessary, said the Commission. Ibid.

UTAH SUPREME COURT.

PUBLIC UTILITIES COMMISSION OF UTAH

v.

MIKE GARVILOCH.

[No. 3350.]

(— Utah, —, 181 Pac. 272.)

Automobiles — Operation — Certificate of convenience — Construction of statute.

1. A statute forbidding an automobile corporation from establishing or beginning the construction or operation of a line, route, plant, or system without obtaining a certificate that public convenience or necessity require "such construction," applies to operation, and not merely to the construction of "a line, route, plant, or system."

Public utilities — What constitute — Automobiles for hire — Routes.

2. A person who operates an automobile for hire, although not with the intention of establishing a route, nevertheless conducts a public utility under the Utah statutes, subject to the jurisdiction of the Utah Commission.

Automobiles — License — Operation and violation of Utilities Act.

3. A state or town license to operate an automobile for hire does not authorize operation in violation of the provisions of the Utah Public Utilities Act.

Automobiles — Designated routes — Hack or taxicab business.

4. One who operates an automobile, hack, or taxicab business upon the request of those who may desire to be carried in a special conveyance which is under their direction and control for the time, and at a price agreed upon for the service, does not operate on or over an established route, within the provisions of the Utah statutes, in violation of the rights of one who has obtained a certificate of convenience and necessity from the Commission entitling him to operate over a designated route, although the passengers in the taxicab may in fact be transported over the route designated in the certificate.

Commissions — Jurisdiction.

Exclusive jurisdiction of Utah Commission over public utilities p. 190.

Certificates of convenience — Franchises.

Discussion of certificate of convenience as limited franchise, p. 190.

Damages.

Discussion of right to action for damages resulting from violation of Utah Public Utilities Act, p. 192.

Injunction — Jurisdiction of court — Monopoly and competition.

Power of court to enjoin competition with established automobile route, p. 192.

[April 29, 1919.]

APPEAL from District Court, Salt Lake County, from a judgment for defendant in an action by the Utah Public Utilities Commission against Mike Garviloch to enjoin interference with an established automobile route; affirmed.

Appearances: Dan B. Shields, Attorney General, and O. C. Dalby, Jas. H. Wolfe, and H. Van Dam, Jr., Assistant Attorneys General, for appellant; Willard Hanson and B. L. Liberman, both of Salt Lake City, for respondent.

Frick, J.: The Public Utilities Commission of Utah, hereinafter called "Commission," commenced this action in the dis-

trict court of Salt Lake county to enjoin the defendant from operating a certain "automobile stage line." The Commission, in its complaint, in substance alleged that on April 2, 1918, one Eugene Chandler made application to the Commission for a "certificate of convenience and necessity," as required by the Utilities Act of this state, to operate "a stage line between Bingham Canyon and Highland Boy mine, and between Bingham Canyon and Copperfield in Salt Lake county;" that thereafter a public hearing was duly had on said application, and that said Commission duly granted the said Chandler a certificate of convenience and necessity to "operate an automobile stage line for the transportation of passengers" between the places before stated, and that no other person or persons have been granted a certificate of convenience and necessity to operate a stage line or to carry passengers between said places; that "this defendant, Mike Garviloch, disregarding the order so made by the Utilities Commission, has undertaken to operate and is now engaged in the operation of an automobile stage line and to carry passengers for hire over said routes as established by the said order of the Utilities Commission, to wit, between Bingham Canyon and Highland Boy mine and between Bingham Canyon and Copperfield, without having received from the said Commission a certificate of convenience and necessity, or without authorization from such Commission so to do, and in violation of the terms of chapter 47, Laws Utah 1917, commonly known as the Utilities Act;" that defendant, after being repeatedly requested to refrain from operating said stage line, refuses to do so, and continues to operate the same; that the Commission has no speedy or adequate remedy at law, and therefore prays that the defendant be enjoined from operating said stage line, etc.

The defendant appeared and filed a general demurrer to the complaint. The demurrer was overruled, and the defendant filed his answer to the complaint, in which he admitted the capacity of the Commission, etc., and in effect denied all other allegations of the complaint. As an affirmative defense he averred: "And further answering said complaint as a defense thereto, this defendant says that he is the owner of a certain automobile, which car has been duly licensed by the state of Utah as a commercial car; that the town of Bingham Canyon

is a duly incorporated municipality of the state of Utah, and on the 12th day of July, A. D. 1918, said town of Bingham Canyon, through its proper officers, duly issued to this defendant a certain license, which license was then and there required by said town of Bingham Canyon for all persons operating an automobile for hire in and around said town, and the said license was duly issued to this defendant by virtue of the ordinance aforesaid, and duly authorized this defendant to operate an automobile for hire from the said 1st day of July A. D. 1918, to the 31st day of December, A. D. 1918; and that at the expiration of said license there was duly issued to this defendant another license from the 1st day of January, A. D. 1919, to the 31st day of March, A. D. 1919, authorizing and permitting this defendant to operate a certain automobile for hire;" that he has operated and continues to operate said automobile for hire by virtue of the licenses aforesaid; "that in and around said town of Bingham Canyon are numerous mines and also a number of towns, and that occasionally he has been employed for hire by diverse and sundry persons to make trips to cities and towns, including trips to Salt Lake City, Garfield, Lark, Midvale, Riverton, Revere Switch, Phœnix, Highland Boy mine, Frisco mine, Copperfield, United States mine, the Boston Consolidated mine, and various and sundry trips around the town of Bingham Canyon and to other places as might be desired by persons desiring to employ defendant to carry them as passengers in said automobile aforesaid;" that he has made no trips between the points mentioned in the complaint "upon any schedule, or attempted to run between said points, except an occasional run not in competition with any person or corporation operating between said points, . . . but has made a few occasional trips between said points when hired to do so by persons who requested the services of this defendant."

A hearing before the district court upon an agreed statement of facts resulted in a judgment dismissing the action, from which the Commission appeals and insists that the district court erred in refusing to enjoin defendant and in dismissing the action.

The defendant contended in the district court, and now contends, that the provisions of the Utilities Act do not cover the

acts complained of, and do not affect him in the conduct of the business which he is carrying on as described in his answer and in the stipulation of facts upon which the judgment is based.

The facts stipulated are very voluminous, and, in view of the issues presented by the pleadings, they are, in many respects, redundant and wholly immaterial. After finding that the Commission had duly issued to Eugene Chandler a certificate of convenience and necessity to operate an automobile stage line over the route in question, and that he is operating the same in accordance with and pursuant to the direction of the Commission, the only material facts under the issues are contained in six out of the thirty-four paragraphs contained in the stipulation. While the facts stated in the six paragraphs, in our judgment, could still be further condensed, yet, in view of the contentions of the parties, we have deemed it but fair to state the facts stipulated in the language of the parties. They are as follows:

"(22) That he [defendant] has since the 1st day of October aforesaid, and up and until he was restrained by order of this court, to wit, the 11th day of January, A. D. 1919, carried passengers as follows: That he has carried passengers for hire in said automobile from Phœnix and also from Highland Boy mine over said highways to the said Denver and Rio Grande Depot in Bingham; that he has likewise carried passengers in said automobile from the said depot to different points in the said town of Bingham, and likewise to the said town of Copperfield and to the said town of Phœnix and to the said Highland Boy mine.

"(23) That he has also carried passengers for hire in said automobile during the said time hereinbefore referred to, over the said highways from the said towns of Phœnix, Bingham, Copperfield, and from the said Highland Boy mine to Salt Lake City, Midvale, Murray, Garfield, and Lark, and to such other places as he might be hired to carry passengers by those wishing to be carried by the defendant, and as he, defendant, might elect to accept said persons as passengers; and that he has likewise carried passengers to and from various points in and around Bingham, such as the United States mine, which is on said highway in the main canyon, and is beyond the town of Copperfield; and to and from the Boston Consolidated mine and other places

in said Carr Fork canyon which are beyond said Highland Boy mine.

"(24) That he has at times during the period set forth herein, to wit, from October A. D. 1918, until January 11, 1919, by permission of the officers of Bingham, and by virtue of said license issued by said town, maintained a place in Bingham near where said Carr Fork branches off from the said main canyon aforesaid, and near the place where the said Eugene Chandler has his stand or place where he maintains his automobiles as aforesaid, and at the said point this defendant during said time received persons whom he carried for hire in said automobile over said highway to the town of Phœnix and to said Highland Boy mine, and also at said place in Bingham he has received persons that he has carried for hire in said automobile over said highway to the town of Copperfield; and that he has likewise during the said period received persons as passengers in the said town of Phœnix, and at Highland Boy mine and in the said town of Copperfield, which he has carried as passengers for hire in said automobile over said highway aforesaid, and discharged the said persons as such passengers at the place in Bingham where he maintains said stand as aforesaid.

"(25) That he has, during said period, and up to the time when he was restrained by order of said court, made from five to fifteen trips per week between the said place or stand in Bingham where he maintained his car as aforesaid and the said town of Copperfield, Phœnix, and the said Highland Boy mine aforesaid.

"(26) That all of said persons so carried, as set forth in paragraphs numbered 24 and 25, were carried at the request of the passengers, and upon no regular schedule or schedules, nor upon any regular rate of fare; that is to say, that whenever persons, desiring to become passengers between said points as aforesaid, requested this defendant to transport them in said automobile and this defendant agreed to accept said persons as passengers, then this defendant charged such sum from such persons as he, defendant, thought the trips might be worth under varying conditions.

"(27) That if said trips were made in stormy or inclement weather the charges would be more than if made in fair weather.

That if one person desired to be conveyed in said automobile as aforesaid, this defendant would charge the said person at least $1, and possibly as much as $2, to transport him to any of the said places, to wit, from the said place in Bingham to Copperfield, Phœnix, or Highland Boy mine; and that if a number of persons applied at the same time, he, this defendant, might make said persons a rate less than a dollar, according to the number desiring to be hauled as passengers as aforesaid."

[1] Defendant relies upon Utah Comp. Laws 1917, § 4818, which, so far as material here, provides: "No . . . automobile corporation, . . . shall henceforth establish or begin the construction or operation of a . . . line, route, plant, or system, or of any extension of such railroad, or line, route, plant, or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction. . . ."

Defendant insists that the provisions of the foregoing section apply only to those who intend to construct "a line, route, plant, or system," etc. The district court held against the defendant's contention. In passing on the question the district court filed a written opinion, of which we adopt the following and make it a part of this opinion, namely: "It is contended by defendant that the omission to say 'operation or construction' at the close of the clause above indicates, if taken in connection with the balance of the section, which relates in terms largely to 'construction,' that the section applies only to the 'construction' of automobile lines, and not to their 'operation,' and that the word 'operation,' where used, is superfluous to the substantial meaning of the section as a whole. It is, of course, elementary in statutory construction that a word may be disregarded or eliminated, if its presence makes the clause in which it occurs unintelligible. Lewis's Sutherland, Stat. Constr. 2d ed. § 384. It is also true, however, that words may be supplied if necessary to give effect to the intention of the legislature, if that intention be ascertained with reasonable certainty. Section 382 of the author just quoted. Reading the statute as a whole, and particularly reading § 4818 with § 4782, subdivision 13, defining 'automobile corporation,' and bearing in mind that as a matter of common knowledge auto-

mobile carriers 'operate' without 'construction,' the court concludes that the insertion of 'or operation,' at the end of the clause above quoted from § 4818, would more correctly give effect to the legislative intent than the elimination of the words, 'or operation,' after the first word 'construction' in the same section. It seems to be the plain purpose of the statute as a whole to regulate all public utilities, including 'automobile corporations' (as therein defined), both as to 'construction' and 'operation.' To strike the phrase 'or operation,' just referred to, would markedly restrict the power of the Commission respecting utilities in general. (And it is not to be inferred that all other utilities are to be controlled by the Commission, both with respect to 'operation' and 'construction,' but that 'automobile corporations' are to be controlled merely with respect to 'construction,' an activity in which 'automobile corporations' almost never indulge. Such an interpretation of the statute would be unreasonable.)"

There are, however, other provisions of the Utilities Act which make it clearer still that the defendant's automobile is within the jurisdiction of the Commission. Utah Comp. Laws 1917, § 4782, subds. 6, 13, 14, and 28, which are a part of the original Utilities Act, read as follows:

"6. The term 'transportation of persons,' when used in this title, includes every service in connection with or incidental to the safety, comfort, or convenience of the person transported and the receipt, carriage, and delivery of such person and his baggage."

"13. The term 'automobile corporation,' when used in this title, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in, or transacting the business of, transporting passengers or freight, merchandise or other property for compensation, by means of automobiles or motor stages on public streets, roads or highways along established routes within this state.

"14. The term 'common carrier,' when used in this title, includes . . . automobile corporation; . . . and every other car corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, operating for public service within this state; and every corporation or person,

their lessees, trustees, receivers, or trustees appointed by any court whatsoever engaged in the transportation of persons or property for public service, over regular routes between points within this state."

"28. The term 'public utility,' when used in this title, includes every . . . automobile corporation . . . where the service is performed for or the commodity delivered to the public or any portion thereof. The term 'public or any portion thereof,' as herein used, means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the state, to which the service is performed or to which the commodity is delivered, and whenever any . . . automobile corporation . . . performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such . . . automobile corporation . . . is hereby declared to be a public utility subject to the jurisdiction and regulation of the Commission and the provisions of this title. . . . Any corporation or person not being engaged in business exclusively as a 'public utility,' as hereinbefore defined, shall be governed by the provisions of this title in respect only of the 'public utility' or 'public utilities' owned, controlled, operated, or managed by it or by him, and not in any respect of any other business or pursuit."

Section 4798 provides: "The Commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, as defined in this title, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction."

After considering all of the foregoing provisions together, as we must, there remains little, if any, room for controversy respecting the jurisdiction of the Commission over all public utilities, or what, within the purview of the act, constitutes a public utility.

Under the stipulated facts, therefore, the defendant and Eugene Chandler are each engaged in operating a public utility.

[2, 3] Defendant contends, however, that the act applies and

the jurisdiction of the Commission extends only to such utilities as are operated on public streets, roads, or highways along established routes, as provided in the act. He insists that the license he obtained from the secretary of state under the general law and the one issued to him by the town of Bingham Canyon give him ample authority to operate his automobile for hire over public streets and highways, as it is stipulated he is doing. He insists that he is not operating his automobile on or along an established route, nor over a regular route as contemplated by the act. We remark that neither the license issued by the secretary of state nor the one obtained from the town of Bingham Canyon gives the defendant the right to operate a public utility, nor affords him any protection if he is operating such utility contrary to the provisions of the Utilities Act. See Puget Sound Traction Light & P. Co. v. Grassmeyer, 102 Wash. 482, L.R.A. 1918F, 469, 173 Pac. 504. The Commission has the exclusive jurisdiction over and power to regulate all public utilities defined in the act. Whenever any person or corporation desires to operate a public utility within this state over a public street or highway, and over what is designated as an established route, he or it, before doing so, is required to obtain from the Commission what in the act is called a certificate of convenience and necessity. Such a certificate is in the nature of a limited franchise, and authorizes the grantee in the certificate to operate a utility over the designated routes, and likewise protects him against interference by others unless authorized by the Commission. In Memphis v. State, 133 Tenn. 83, L.R.A.1916B, 1151, P.U.R.1916A, 825, 179 S. W. 631, Ann. Cas. 1917C, 1056, in speaking of the power to regulate public utilities on public roads or highways, the court, in the course of the opinion, said: "It is too clear for extended discussion that it was competent for the legislature, under the police power, to regulate the use of the streets and public places by jitney operators, who, as common carriers, have no vested right to use the same without complying with a requirement as to obtaining a permit or license. *The right to make such use is a franchise* to be withheld or granted as the legislature may see fit." (Italics ours.)

As bearing upon the proposition just stated, see also State v. Mayo, 106 Me. 62, 26 L.R.A.(N.S.) 502, 75 Atl. 295, 20 Ann.

Cas. 512; Com. v. Kingsbury, 199 Mass. 542, L.R.A.1915E, 264, 127 Am. St. Rep. 513, 85 N. E. 848; Gray's Petition (N. Y.) P.U.R.1916A, 33. The granting of a certificate of convenience and necessity by the Commission to Chandler, therefore, was in the nature of a limited franchise which authorized him to operate his automobile stage line over the route designated in the certificate for the time and under the conditions therein specified. The certificate, therefore, not only confers authority to operate the stage line, but it necessarily also affords him protection against anyone who unlawfully interferes with the right thereby conferred. If such is not the legal effect of the certificate, then the operation of utilities may easily become detrimental rather than beneficial to the public and thus result in a farce. To obviate such a result is, in our judgment clearly contemplated by the act itself. Utah Comp. Laws 1917, § 4840, provides for actions for damages by all persons who may be injured in any respect by the acts or omissions of any public utility. This necessarily includes damages for the unlawful interference by one public utility with the rights and franchises of another public utility. That proposition is clearly illustrated in Puget Sound Traction, Light & P. Co. v. Grassmeyer, supra.

In addition to the foregoing, however, ample power is also conferred on the Commission to bring actions in the courts to enforce its orders and to punish violations of the Utilities Act.

There is, therefore, no doubt concerning the jurisdiction of the Commission over the defendant and over the business he is conducting, nor concerning the question that, if he is unlawfully interfering with the rights granted to Eugene Chandler under the certificate of convenience and necessity issued by the Commission, the court, upon the application of the Commission, if such interference be established, not only has the power to prevent such interference by injunctive relief, but, in such case, it would be its duty to do so. The question therefore, is whether, under the issues presented by the pleadings, and in view of the stipulated facts, the defendant has unlawfully interfered or is so interfering with Chandler's rights under the certificate of convenience and necessity issued to him.

[4] It will be observed that all that is complained of in the complaint is that the defendant is operating a stage line, that is,

a public utility, over an established route without having obtained permission to do so from the Commission as required by the Utilities Act. The defendant denied the charge, and in his answer set forth in detail the nature or character of the business he is conducting, which he contends is not interfering with any established route, etc. He, however, also insists that in view that he is not operating his automobile over a route established by himself, and is not operating his car according to a fixed schedule and for a fixed charge for the service rendered, therefore his business is not subject to regulation by the Commission. The contention, in our judgment, is not tenable to the full extent claimed by defendant.

The test, where the Commission has jurisdiction over a particular utility, is not whether the party complained of, as here, is operating an automobile or stage line for hire over a route upon a schedule or at a fixed rate of fare for the services rendered, but the test is whether he is in fact operating a public utility over a material portion or the whole of an established route over which another has theretofore obtained from the Commission a certificate of convenience and necessity to operate a public utility. Much was said in the argument about what constitutes an established route within the purview of the act, and how and by whom such a route may be established. To our minds that question is not difficult of solution. In this case the route, within the purview of the act, was manifestly established over the public highway between the points stated in the complaint and designated in the certificate of convenience and necessity issued to Chandler. No doubt the defendant is not operating his automobile over a route which was established upon his application as was the Chandler route, but that is not controlling. What he is charged with is that he is operating a public utility over a route established by the Commission upon the application or petition of Chandler, and over which route Chandler has been granted a certificate of convenience and necessity to operate a public utility for the benefit of himself and the public. If, therefore, the defendant is operating his automobile over Chandler's route, or over a substantial part of it, in opposition to or in competition with Chandler, then, in our judgment, the defendant is doing so in violation of the Utilities Act.

If he solicits passengers at or near the Chandler route from among those who but for his solicitations would use the utility operated by Chandler, and transports them over the route designated in the certificate issued to Chandler, then he is doing so in violation of Chandler's rights, granted to him by the certificate. If, however, as contended by his counsel, defendant is not soliciting passengers, as before stated, and is only transporting those who specially apply to him for transportation from points which have no connection with the points on the route operated by Chandler, or if he is hired by one or more persons to carry him or them from a point outside of Chandler's route to a point on Chandler's route for a price agreed upon between such persons and the defendant for the services rendered, and the persons hiring his automobile may direct when and where it shall go, then he is not violating the provisions of the Utilities Act. In other words, if the defendant is merely carrying on a so-called hack or taxicab business upon request from those who may desire to be carried in a special conveyance which is under their direction and control for the time for which it is hired and at a price agreed upon for the services, then he is not operating on or over an established route within the purview of the act, and is not subject to regulation as though he were operating such a route. The proposition just stated is well illustrated in the case of Terminal Taxicab Co. v. District of Columbia, 241 U. S. 252, 60 L. ed. 984, P.U.R.1916D, 972, 36 Sup. Ct. Rep. 583, Ann. Cas. 1916D, 765, in which case, in the course of the opinion, it is said: "It may be assumed that a person taking a taxicab at the station [railroad station] would control the whole vehicle both as to contents, direction, and time of use, although not, so far as indicated, in such a sense as to make the driver of the machine his servant according to familiar distinctions."

It is accordingly held in that case that a vehicle which is hired as just stated does not come within the rule applicable to those vehicles which are operated over regular or established routes. To the same effect, see also Re Ryder (N. Y.) P.U.R. 1916B, 1067. If, therefore, the defendant interferes with the established route by soliciting patronage, as hereinbefore illustrated, he may, nevertheless, be prohibited from so interfering. Such, it seems to us, is manifestly the purpose of the act. If

such is not the case, regulation will accomplish nothing, and the public interests will not thereby be subserved. Whenever a route is established, the person or corporation to whom a certificate is granted must operate the vehicle used at the times, in the manner, and for the prices designated in the certificate. The utility must be operated in good and in bad weather, and, if so specified, both day and night. If, therefore, any one who owns an automobile may compete with the one who has obtained a certificate by soliciting passengers who wish to pass over the established route, then he may do that only in fair weather and at such hours or times when the travel is greatest, and may thus make it impossible for the one having the certificate to successfully carry on the business because of lack of patronage and insufficient remuneration for conducting the business. Public convenience may thus not only be greatly affected, but might be entirely destroyed instead of being subserved. If the public is not properly served by the one having obtained a certificate over an established route, any one in interest may complain, and the Commission has full power to compel obedience to any orders it may make with respect to the matter. Moreover, if the person operating the route fails to give adequate service, any person may apply to the Commission for a certificate to operate a utility over the same route upon such terms and conditions as may seem just and proper to the Commission under all the circumstances. While in this case we are not as well satisfied as we might be that the defendant is not, to some extent at least, interfering with Chandler's business, yet, in view of the stipulated facts upon which the district court based its judgment, we cannot say that the interference is unlawful, or is such as to authorize this court to reverse the judgment or order what judgment should be entered different from the one that has been entered.

We have arrived at the foregoing conclusion with less reluctance for two reasons: (1) Because the principal purpose of bringing this action was to obtain a construction of the Utilities Act for the purpose of determining the respective rights of the Commission and the holder of a certificate of convenience and necessity; and (2) for the reason that if Chandler's business is in fact unlawfully interfered with by the defendant, as stated by the attorney general at the hearing, Chandler may, as before

stated, institute an action on his own behalf, and recover such damages as he may prove, or he may obtain such other relief as may be just and equitable in the premises. He, not being a party to this action, is not bound by the stipulation of facts in this case, and hence may allege and prove the facts regarding defendant's operation of his automobile as they in fact exist, if indeed they materially differ from the agreed statement in this case.

For the reasons stated, the judgment is affirmed. Costs to the defendant.

Corfman, Ch. J., and Weber, Gideon, and Thurman, JJ., concur.

Note.—Municipal Ordinances and Regulations.

Jitney ordinances and regulations have been upheld against various contentions that they are invalid.

Thus in Huston v. Des Moines (1916) — Iowa —, 156 N. W. 883, it was held that a bond of $2,000 for indemnity against the negligent operation of jitneys is not excessive; that an ordinance graduating license fees from $15 to $35 per year according to the seating capacity is not invalid on the ground that the fees are so large as to amount to a revenue measure; that requiring jitneys to display the city license number in addition to the one required by the state, and requiring the bus to be illuminated after dark and to be brought to a full stop before crossing any street or any interurban or steam railway are valid regulations in the interest of the public safety; and that a municipality authorized to regulate the operation of jitneys may prohibit overloading and the drawing of trailers.

A provision in an ordinance regulating operation of jitneys that it should be the duty of the judge of the court, in which an operator of a jitney should plead guilty or be convicted of violating any law relating to traffic and use of the streets, to determine if the offense is of such gravity that interest of public safety demand that the license be revoked and to make his recommendation to the city council to that effect and authorizing the council to revoke, suspend or continue in force such license as it may deem proper, is not invalid. Huston v. Des Moines. Requiring owners of jitneys to furnish indemnity bonds of $2,000 against negligent operation does not deprive them of their property without due process of law, is not unjustly discriminatory, and is not in restraint of trade. Huston v. Des Moines.

UTAH PUBLIC UTILITIES COMMISSION.

GUS PAULOS et al.

v.

A. J. RADEBAUGH.

[Case No. 378.]

Commissions — Jurisdiction — Restraining order.

1. The Utah Commission is without power to issue an order restraining the operation of a bus line not possessing a certificate of convenience and necessity.

Public utilities — What constitutes — Auto freight line.

2. A person operating an auto freight service for the public or any portion thereof is a common carrier and subject to the provisions of the Public Utilities Act of Utah, although such operation consists in the transportation of freight under contracts.

[May 20, 1921.]

COMPLAINT against the operation of an auto freight line without a certificate of convenience and necessity; complaint sustained.

Appearances: L. E. Tripp, for complainants; E. F. Allen, for defendant.

By the **Commission**: The above entitled matter came on for hearing before the Commission, upon the complaint of the plaintiffs and the answer of the defendant, January 17, 1921.

The complainants allege that they are the owners of, and are operating, an automobile truck line between Salt Lake City and Magna, Utah, for the purpose of carrying freight for the general public between the two said points, and that they have so operated since 1914; that after the Public Utilities Commission was created, said complainants filed with the Commission their schedule of rates, fares, and charges, and classifications, according to the statute of the state of Utah; that, notwithstanding said service was being given by the complainants, the defendant, since about September, 1920, has maintained and operated an automobile truck freight line between Salt Lake City and Magna, and has, in a general way, engaged in the transportation of merchandise between said points. Complainants further allege that they are able at all times to maintain sufficient and adequate service for the benefit of the general public in the transportation

of freight; and, therefore, ask that an order issue from the Commission, restraining said defendant from so operating between Salt Lake City and Magna.

The defendant, in answering the complaint, denies that he is now, or at any time has been, engaged in the transportation of freight for the general public, or that he has ever at any time or place held himself out to be engaged in such occupation; but alleges the fact to be that for some time he has hauled freight for individuals under and by virtue of contracts entered into by and between certain individuals and himself. He denies that he has violated the law in such work, and asks that the complaint be dismissed.

The contention of the complainants, and to which they testified, was that they had been operating a stage line between Magna, Garfield, and Salt Lake City since 1914; and, since the creation of the Public Utilities Commission, had complied with the law with reference to the giving of the service; that the defendant, A. J. Radebaugh, started about last September to deliver oil for the Continental Oil Company, and that the said defendant began to pick up and haul freight for other people along the same route as the complainants had been serving.

The defendant testified that he had taken a contract with the Continental Oil Company to distribute oil in that section of the country, and which did not take up all of his time; that individuals had come to him and asked him to haul their goods, and that he made a verbal contract with some of them to haul their freight, and a written contract with others; but that he did not advertise or hold himself out as a common carrier, to haul freight and express for the general public, and had not solicited any business. Others testified that they had called Mr. Radebaugh and asked him to haul their goods. The defendant further testified he had not under the law been operating as a common carrier, as he understood it; but, in connection with the business of delivering the oil, had hauled for others under contract.

In this case there is presented a question as to whether or not the acts of the defendant in hauling and delivering freight constitute a common carrier, or a public utility. Under the act,

a public utility includes every common carrier or automobile corporation, where the service is performed for, or a commodity delivered to, the public or any portion thereof, and the term "public or portion thereof," as defined by our law, means the public generally or any limited portion of the public, including a person, private corporation, municipality, or other subdivision of the state to which the service is performed, or to which the commodity is delivered; and whenever a common carrier or automobile corporation performs a service or delivers a commodity to the public, for which any compensation or payment whatsoever is received, such corporation is declared to be a public utility and subject to the jurisdiction and regulation of the Commission. An automobile corporation includes every corporation or person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property, for compensation, by means of automobiles, motor trucks, or motor stages, on the public streets, roads, or highways along established routes within this state.

There is no question but that the defendant was unauthorized to transact business as a common carrier, and, if he were engaged in hauling freight, merchandise, or other property, as above defined, for compensation along the route in question, and such service so performed was for the public or any portion thereof as herein defined, he was violating the law.

The term "public or any portion thereof" would seem to mean the public generally or any limited portion thereof, including a person, private corporation, municipality, or other political subdivision of the state. The above definition may not be clear, and, in interpreting the same, we are forced to take into consideration the spirit and meaning of the law. The Commission has taken the attitude that it does not contemplate the interfering with a person to have or make private contracts, or to prevent a person from entering into such contracts for the transportation of his goods from one point to another; and still, it is possible that a corporation or carrier might be able to contract for all the freight into a certain point, and thereby avoid the control of a Commission in the performance of such service. The law contemplates further that a common carrier or utility as herein defined, shall

be subject to a governing or controlling Commission; first, for the purpose of preventing common carriers and utilities from imposing upon the general public by way of excessive rates or inadequate service; second, to protect an operating common carrier or utility in the giving of service along an established route.

[1] The Commission could not comply with the prayer of the complainant in issuing a restraining order. That is a matter that belongs to the courts of justice, and to which this Commission has gone in enforcing the provisions of the Public Utilities Act.

[2] The Commission is of the opinion that the defendant has technically violated the law, and that he would be subject to prosecution, if he persists in such acts. It is the duty of the Commission, inasmuch as it requires the operating corporation to transact and perform the business of transporting freight and express along a certain route, to protect such corporation from the unnecessary competition of other carriers or service corporations.

After a careful consideration of the testimony given in this case, we are of the opinion that the defendant would not be warranted in a continuation of a part of the service that he was rendering the public, and that it was in opposition and interfered with the regularly established route operated by the complainants, and that the defendant should be so notified that if he persists in such action as would constitute a violation of the law as explained herein, further proceedings would be instituted in the courts, for the purpose of enjoining and restraining him from the doing of such things.

An appropriate order will be issued.

Warren Stoutnour, Joshua Greenwood, Commissioners.

Note.—Failure to Operate.

In Re Purdue, June 24, 1919, P.U.R.1919E, 196, the Utah Commission held that the failure of an automobile operator to operate his stage line, although in anticipation of entering the military service of the United States, constituted an abandonment of the route and a consequent forfeiture of the right to operate, where the operation was discontinued prior to the call to the colors, at the time when the owner was equipped and so situated as to have operated the line had he so desired.

WEST VIRGINIA SUPREME COURT OF APPEALS.

EX PARTE DICKEY.

(— W. Va. —, 85 S. E. 781.)

Highways — Quality of use by common carriers.

All rights of common carriage on highways, such as those conducted by means of drays, omnibuses, hackney coaches, and taxicabs, are legislative grants or concessions, much lower in legal quality and dignity than the rights of ordinary use to which highways are incidentally subjected by citizens in travel and the prosecution of their business.

Municipalities — Use of streets — Implied grant of right of common carriers.

Legislative recognition of such right of common carriage as one common to all citizens by grant of authority to municipal corporations to license and tax persons engaged in the exercise thereof, in the manner in which they are authorized to license and tax ordinary vocations, is an implied grant of such common right.

Common carriers — Use of highways — Convenience to public.

But the legislature may so limit, qualify, and regulate such right as to make the exercise thereof subserve the interest and con-

Headnotes by the COURT.

Note.—Purchasing Operative Rights.

In Re Loyd (Cal.) Decision No. 5171, Application No. 3472, March 2, 1918, it was held that an individual cannot purchase the right to operate an automobile transportation service over a route served by an individual or a company operating in good faith prior to May 1, 1917, without securing local permits or a certificate from the Commission. (P.U.R.1918C, 319.)

Note.—Rate Increases.

In Re Angle, P.U.R.1922B, 399, the Utah Commission authorized the operator of an auto stage line to increase rates upon showing that the stage had been operated at a loss on account of the increased ownership of private cars and the partial closing of mines resulting in a decrease in population, with a consequent reduction in patronage.

Note.—Revocation of Permit.

The failure of a grantee named in a certificate of convenience and necessity for the operation of an auto stage, to fully meet the obligations and responsibilities imposed by statutory law and by the rules and regulations of the Commission, including furnishing a regular and dependable service in accordance with approved rates and time schedules, is cause for revocation of such certificate. Re Boyle (Cal.) P.U.R. 1922A, 859.

venience of the public, as in the case of ferries, street railways, telegraphs, and telephones.

Constitutional law — Use of streets and highways — Delegation of powers of regulation.

To that end, it may prescribe the number, character, routes, rates, and hours of service of common carrying vehicles on the highways, or delegate such power of regulation to municipal corporations.

Municipalities — Regulation of use of streets — What amounts to delegation of power.

A charter provision empowering a municipal corporation to grant, refuse, or revoke licenses to the owners of vehicles kept for hire therein, and to subject them to such regulations as the interest and convenience of the inhabitants thereof, in the opinion of the municipal authorities, may require, delegates to the corporation full legislative power over such vehicles.

Municipalities — Powers — Regulation of jitneys.

Under such authority, the corporation has power to prescribe the routes and hours of service of motor vehicles commonly called "jitney busses," carrying passengers along the streets and taking in and discharging them in a manner similar to that in which they are received and discharged by street cars, and to require from them indemnity against injury to persons and property occasioned by the operation thereof.

Municipalities — Powers — Classification of vehicles.

A municipal corporation having full legislative power to limit and regulate the use of vehicles kept for hire may classify them, for purposes of regulation; and an ordinance dealing fully with one class of such vehicles, as determined by the nature of their business and the prices they charge, is not discriminative because of its lack of provision for the regulation of other distinct classes of vehicles kept for hire.

Municipalities — Regulation of vehicles — Arbitrary classification.

Specification of the price charged by a common carrier vehicle, as an element of its description in an ordinance prescribing its class, does not make the classification arbitrary or discriminative, unless it appears that there are other vehicles of the same class, as determined by the nature of their business, that charge prices other than those specified.

[June 22, 1915.]

WRIT of habeas corpus charging illegality of ordinance for violation of which relator is held in restraint of his liberty; writ refused.

Appearances: Daugherty & Riggs for petitioner; F. M. Livezey for respondent.

Poffenbarger, J., delivered the opinion of the court:

Charging illegality of an ordinance for violation of which he

is held in restraint of his liberty, the relator seeks his discharge on a writ of habeas corpus.

The ordinance in question is one made by the commissioners of the city of Huntington, for the regulation, licensing, and taxing of certain vehicles commonly known as "jitney busses," designated in the ordinance as motor busses, and therein defined as vehicles "propelled by either gasolene or electricity, operated over any of the streets in the city of Huntington, for the purpose of carrying passengers for hire, at a rate of fare of 15 cents or less for each passenger, and which receives and discharges passengers along the route traversed by such vehicles." It makes it unlawful for any person, firm, or corporation to use or occupy any public street in the city of Huntington with a motor bus, without a permit or license therefor and compliance with the terms of the ordinance. It imposes an annual license tax of $50 for such of them as have capacities of four passengers or less and $70 for such as have capacities of five passengers or more, but allows an apportionment of the tax when the license is taken out for the unexpired portion of a year. It also requires the licensee to enter into a bond in the penalty of $5,000, with a condition for compliance with the provisions of the ordinance and payment of any and all lawful claims for damages for injury to persons or property sustained by passengers in them or by other persons that may be killed or injured or suffer damage to property in the city of Huntington in the operation thereof. A condition precedent to the issuance of the license is the filing of an application showing: (1) The name, residence, and business address of the person, firm, or corporation owning and operating the bus; (2) the type of motor bus to be used; (3) the number of such vehicles to be operated by the applicant and the state license number of each; (4) the seating and weight capacity of each; and (5) the terminals and the routes over which it is to be operated, and the hours of its operation. The Commission reserves to itself the right to refuse or grant such permit or license as applied for, or to change the route or the hours set forth in the application and then grant the license upon such changed route or hours or both.

As regards legislative power or control, the business or interest regulated by the ordinance is clearly distinguishable from vocations, the pursuit of which does not involve the use of public

property. The right of a citizen to pursue any of the ordinary vocations, on his own property and with his own means, can neither be denied nor unduly abridged by the legislature, for the preservation of such right is the principal purpose of the Constitution itself. In such cases, the limit of legislative power is regulation, and that power must be cautiously and sparingly exercised, unless the business is of such character as places it within the category of social and economic evils, such as gaming, the liquor traffic, and numerous others. To this list may be added such useful occupations as may, under certain circumstances, becomes public or private nuisances, because offensive or dangerous to health. All of these fall within the broad power of prohibition or suppression, some wholly and absolutely and others conditionally. Such pursuits as agriculture, merchandising, manufacturing, and industrial trades cannot be dealt with at will by the legislature. As to them, the power of regulation is comparatively slight, when they are conducted and carried on upon private property and with private means. But when a citizen claims a private right in public property, such as a street or park, a different situation is presented. Such properties are devoted primarily to general and public, not special or private, uses, and they fall within almost plenary legislative power and control. In them, all citizens have the usual and ordinary rights in an equal degree and to an equal extent. In the regulation thereof, the legislature cannot discriminate. But, as regards unusual and extraordinary rights respecting public properties, its power of control and regulation is much more extensive. Such rights are in the nature of concessions by the public, wherefore the legislature may give or withhold them at its pleasure. It may give them for some purposes and withhold them for others, and, in the case of those given, it may, upon considerations of character, quality, and circumstances, discriminate, permitting some things of a general class or nature to be done and refusing to permit others of the same general class to be done, or extending the privilege to some persons and denying it to others because of differences of character or capacity.

The right of a citizen to travel upon the highway and transport his property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who

makes the highway his place of business and uses it for private gain, in the running of a stage coach or omnibus. The former is the usual and ordinary right of a citizen,—a common right,—a right common to all; while the latter is special, unusual, and extraordinary. As to the former, the extent of legislative power is that of regulation; but, as to the latter, its power is broader, the right may be wholly denied, or it may be permitted to some and denied to others, because of its extraordinary nature. This distinction, elementary and fundamental in character, is recognized by all the authorities:

"A distinction must be made between the general use, which all the public are permitted to make of the streets for ordinary purposes, and the special and peculiar use, which is made by classes of persons in the pursuit of their occupation or business, such as hackmen, drivers of express wagons, omnibuses, etc." Tiedeman, Mun. Corp. § 299.

"The rule must be considered settled that no person can acquire a right to make a special or exceptional use of a public highway, not common to all citizens of the state, except by grant from the sovereign power." Jersey City Gas Co. v. Dwight, 29 N. J. Eq. 242; McQuillen, Mun. Corp. 1620.

An ordinance of the city of Boston provided that no person should make an address in or upon or near the public grounds of the city, without a permit from the mayor. Having been denied such a permit, one Davis did make a public address on public grounds known as "Boston Commons." Under this ordinance, he was convicted of an offense, and the supreme judicial court of Massachusetts affirmed the judgment, holding the legislature had conferred upon the city of Boston the power to pass and enforce such an ordinance. On an appeal to the Supreme Court of the United States, the judgment of the state court was affirmed, and Mr. Justice White, delivering the opinion of the court, said: "The 14th Amendment to the Constitution of the United States does not destroy the power of the states to enact police regulations as to the subjects within their control, . . . and does not have the effect of creating a particular and personal right in the citizen to use public property in defiance of the Constitution and laws of the state." Davis v. Massachusetts, 167 U. S. 43, 47, 42 L. ed. 71, 72, 17 Sup. Ct. Rep. 731, 733.

Plainly, therefore, the result of this inquiry depends not upon the power of the legislature over the subject-matter of relator's alleged right, but upon the action of the legislature respecting the same. That he has no natural or indefeasible right to maintain upon a public highway a vehicle for the carriage of passengers for hire is unquestionable. Though, in point of theory, special rights in highways are vested in individuals only by legislative grant, it is a matter of common knowledge and judicial cognizance that, without express legislative permission to do so, citizens use them in special ways consistent with their nature. They naturally enter upon them and carry on business, not inconsistent with their use for ordinary purposes, or rather not obstructive of such use, until prohibited by a statute or an ordinance. In the early history of this country, before the establishment of railroads, the public roads were used by stage lines. Indeed, passenger transportation through the country, other than that by navigable waters, was carried on by means of stage lines, and the legislatures exercised little, if any, authority over them, beyond the establishment of such regulations as were applicable to other vehicles on the public roads. How their rights were acquired, and just what regulations were imposed, would be matter of historic interest, but its importance or relevancy upon this inquiry would hardly justify the examination of the early statutes, requisite to the ascertainment of the creation, recognition, or regulation of the right. At this late day, they are not readily to be found in the text-books. City cabs and omnibuses are of the same general nature and are permitted to use the streets of all cities and villages throughout the country, without any special grant from the legislature. Proceeding upon the assumption of the right of owners of vehicles to use highways for the purposes of common carriage, the legislatures deal with them in much the same manner as that in which they deal with ordinary vocations, confining themselves to measures of regulation. While it does not amount to an express grant of right to make use of the highways, it is a recognition thereof which fairly amounts to an implied grant. In the general statutes of the state, there is neither a grant nor a prohibition of the use of the public highways for the purposes of common carriage, such as stage lines or omnibuses, and in the charters granted by the legislature to cities,

towns, and villages, as well as in chapter 47 of the Code, under which corporations having a population of less than 2,000 may be organized, there is neither an express grant nor a prohibition of such right; but by the special charters, as well as by chapter 47, municipal corporations are authorized to license vehicles kept for hire, just as they license hotels, peddlers, brokers, billiard and pool tables, slot machines, and numerous other persons and enterprises. Section 28 of chapter 47 of the Code, serial § 2409, among other things authorizes the councils of cities, towns, and villages "to impose a license tax on persons or companies keeping for hire carriages, hacks, buggies, or wagons, or for carrying passengers for pay in any such vehicle, in such city, town or village." A similar provision is found in most of the special charters granted by the legislature. This implies the right and, if necessary, grants it. What is necessarily implied in a statute, or must be included in it to make the terms actually used have effect, according to their nature and ordinary meaning, is as much a part of it as if it had been declared in express terms. State v. Harden, 62 W. Va. 313, 58 S. E. 715, 60 S. E. 394; Hasson v. Chester, 67 W. Va. 278, 67 S. E. 731.

A similar method of dealing with them in other states is disclosed by the statutes and decisions thereof. Everywhere such enterprises are regarded and treated as of rightful existence and subjected to regulation and control in the same manner as ordinary vocations not in any sense involving the use of public property. Generally the authority and power of regulation in cities and towns is treated as having been delegated to them by the legislatures. Frommer v. Richmond, 31 Gratt. 646, 31 Am. Rep. 746. In Com. v. Stodder, 2 Cush. 562, 48 Am. Dec. 679, the authority of the mayor and aldermen of the city of Boston to require licenses from citizens of other towns and cities for the maintenance of hackney coaches and omnibuses, for the carrying of passengers from neighboring towns into the city and out of the city to such neighboring towns, without legislative authority therefor, was denied, as was also their authority to impose any tax upon such carriers.

However it may be regarded as having been acquired, the right claimed by the relator, in the absence of legislative prohibition, seems to be considered in all jurisdictions as one common to all

citizens who care to exercise it. Public highways are treated as navigable waters, in the sense that any citizen desiring to use them as a common carrier thereon may acquire the necessary equipment, select the portion of the highway or river he desires to use, and enter upon the business in common with all other persons engaged in it. It is equally clear, however, that the legislature has full and complete power for drastic regulation of such business and to take away the right to pursue it upon such highways as it may see fit to devote exclusively to ordinary public uses. In O'Connor v. Pittsburgh, 18 Pa. 187, Gibson, Ch. J., said: "To the commonwealth here, as to the King in England, belongs the franchise of every highway as a trustee for the public; and streets regulated and repaired by the authority of a municipal corporation are as much highways as are rivers, railroads, canals, or public roads laid out by the authority of the quarter sessions. In England a public road is called the King's highway; and, though it is not usually called the commonwealth's highway here, it is so in contemplation of law, for it exists only by force of the commonwealth's authority. Every railroad, canal, turnpike, or bridge company has its franchise by grant from the state, and consequently with its original qualities and immunities adhering to it. Every highway, toll or free, is licensed . . . and regulated by the immediate or delegated action of the sovereign power; and in every commonwealth the people in the aggregate constitute the sovereign."

To accomplish the exclusion of automobiles from the use of certain streets or public ways in cities and towns, the legislature of Massachusetts deemed it necessary to pass a statute authorizing the aldermen of the cities and selectmen of the towns to make such regulations, subject to a power of review in the State Highway Commission. The constitutionality of this statute was questioned in Com. v. Kingsbury, 199 Mass. 542, 127 Am. St. Rep. 513, 85 N. E. 848, but the court upheld it.

It would be inconsistent with this theory to say the legislature, in committing to county courts, villages, towns, and cities the controls of such portions of the highways as happen to be within their limits, intended to make them absolute owners and proprietors of the same, with power to do as they please with them. Such municipalities own such portions of the highways for such

public uses and purposes as the legislature, by express declaration or implication, recognizes as lawful. They hold them as agencies of the state for such public uses, and therefore they can limit, restrict, or regulate such uses in such manner and to such extent only as the legislature has authorized. For the promotion of local comfort, convenience, and prosperity, the legislature has empowered them to establish, maintain, and improve highways and given them authority to raise money by taxation for such purposes; and, at the same time, it has compelled them to assume, not only the burden of construction and maintenance, but also liability for injuries occasioned by defects. Nevertheless, it would be inconsistent with sovereign legislative power and control over the highways to infer from this agency legislative purpose to confer upon local municipalities power to deny any right of the public in them. Therefore such authority does not exist, unless it has been expressly or impliedly conferred.

In the light of these general principles and conclusions, the provisions of the charter of the city of Huntington, applicable to the subject, must be read and interpreted. The most comprehensive one of these, and the only one it is deemed necessary to consider, is found in § 68 of chapter 3 of the Acts of 1909. After having authorized the commissioners to require a city license for anything for which a state license is required, and to impose a tax thereon for the use in the city, it proceeds as follows: "And the Board of Commissioners shall have the power to grant, refuse, or revoke any such license of owners or keepers of hotels, carts, or wagons, drays, and every other description of wheeled carriages kept or used for hire in said city, and to levy and collect tax thereon and to subject the same to such regulations as the interest and convenience of the inhabitants of said city, in the opinion of the Board of Commissioners, may require."

Power in the city to subject all kinds of wheeled carriages kept for hire to such regulations as the interest and convenience of the inhabitants thereof may require, in the opinion of the Board of Commissioners, and to refuse them license, is as broad as the power of the legislature itself over them. They, with the owners and keepers of hotels, are segregated from all other subjects of license and taxation, by the terms of the statute, and put into a separate and distinct class over which the city is ac-

corded full and complete power. In all other cases, it is authorized merely to require licenses and impose taxes, and nothing is said about regulation. In these, there is an explicit grant of power to grant, refuse, or revoke licenses and to regulate in a manner and to an extent left in the discretion of the Commissioners. It is wholly unlike the power over the same subjects, granted by § 28 of chapter 47 of the Code, and necessarily evinces legislative intent greatly to enlarge that power. How far? The terms are unlimited. Nothing in the nature of the subject-matter affords a basis or ground for a presumption against intent to allow the words effect accordant with their full literal import. The presumption of intent to allow such vehicles the rights previously enjoyed by them and recognized in most of the special charters and the general law is completely overthrown and broken down by the use of terms in this charter, wholly inconsistent with it. It is difficult to conceive of more comprehensive terms. Of course, the provisions could have been so framed as expressly and in terms to have authorized exclusion from certain streets, the observance of certain hours, and the like, but it is unusual for legislative acts granting full discretionary power to descend into such details. In every such attempt at enumeration, there is always danger of omission of things intended to be included. The standards of regulation here are the interest and convenience of the inhabitants of the city as seen and understood by the Commissioners; not any pre-existing law relating to the subject-matter, except, perhaps, the limitations inhibiting discrimination and unreasonableness, to which the legislature itself is subject.

"While the mere power to license, or to license and regulate, does not confer the power to grant an exclusive license, yet authority delegated to a municipality to grant or refuse a license empowers it to grant such exclusive license." 25 Cyc. 603; Burlington & H. County Ferry Co. v. Davis, 48 Iowa, 133, 30 Am. Rep. 390; Rosa v. New Orleans, 1 La. 126; Carroll v. Campbell, 25 Mo. App. 630.

"The power to grant an exclusive license must be found, we think, if at all, in other words of the charter. Upon looking into it, we find that it conferred the 'power to grant and refuse license.' Herein, we think, was conferred the power to grant an exclusive license. The power to license necessarily includes the power to

prohibit unlicensed persons from doing the acts authorized by the license. The power to refuse license necessarily gives the power to limit the issuance of licenses." Burlington & H. County Ferry Co. v. Davis, cited.

Under the broad power given by this charter, to grant, refuse, and revoke licenses to hotel keepers and operators of vehicles kept for hire, and to regulate them for the interest and convenience of the inhabitants of the city, the commissioners may do anything respecting these subjects that the legislature itself could do, and, as we have shown, that power is almost unlimited.

For the grant of such power, reason is found in the nature of these subjects. Whether a hotel or tavern should be permitted in a given place depends upon its character and how it is conducted, for the privilege is peculiarly liable to abuse, and the comfort of the traveling public demands the maintenance of suitable accommodations, just as in the case of a ferry or other provision for public necessities and conveniences. Conveyances on the streets, for the use of the general public, are of the same character, and, in addition to this, cabs, hackney coaches, omnibuses, taxicabs, and hacks, when unnecessarily numerous, interfere with ordinary traffic and travel and obstruct them. Prescription of routes or places of business for them is a fair, reasonable, and efficacious means of preventing such results. Nor is it unreasonable to require them to maintain the service during prescribed hours. They are engaged in a public service which the legislature may always regulate. Nor is there any constitutional inhibition of legislative requirement of indemnity from persons so engaged, against injury to persons or property. State ex rel. Case v. Howell, — Wash. —, 147 Pac. 1159; Portland v. Western U. Teleg. Co. — Or. —, L.R.A. 1915D, 260, 146 Pac. 148; Springfield Water Co. v. Darby, 199 Pa. 400, 49 Atl. 275.

While this ordinance is said to be discriminatory in favor of omnibuses, taxicabs, hacks, and other vehicles kept for hire, not of the class described in the ordinance, and against that class, there is no suggestion, in the petition for the writ or in the argument, of the existence of "jitney busses" in the city not included by the description. The price charged is made an element of the description, and, if there were "jitney busses" charging more than 15 cents, this might operate as a classification with reference

to the price charged for service and render the ordinance unreasonable. In the opinion of a majority of the members of this court, it would. But there is no pretense of the existence of such vehicles, and, if there are such, we have no judicial knowledge of them. The popular name of the vehicle signifies the contrary. A "jitney bus," charging more than 5 cents as the ordinary fare, would be a contradiction in terms, and the ordinance may be amenable to criticism for misdescription, on that ground, but clearly not void for that reason.

The ordinance is not obnoxious to the provisions of chapter 43B of the Code of 1913, regulating motor vehicles generally, nor within the scope thereof, except in so far as it imposes the duty of state regulation and a state tax and prescribes the law of the road. These vehicles are more than mere automobiles incidentally used by the citizens for purposes of business and pleasure. They include an additional element, common carriage, bringing them within the municipal power of control, just as horse-drawn carriages and other vehicles fall within it, by reason of the peculiar uses made of them.

Our conclusion is that the ordinance is free from constitutional and other defects, and therefore valid. It may be burdensome and, in the opinion of many people, oppressive and unwise, just as many other valid laws are regarded. But the question submitted here is one of municipal power, not policy. With the latter the courts have nothing to do, nor can they overthrow laws, ordinances, or regulations made by competent authority, merely because, in the opinion of the judges, they might or should have been made more liberal or less rigorous. Spedden v. Board of Education, — W. Va. —, 52 L.R.A.(N.S.) 163, 81 S. E. 724; Charleston v. Littlepage, 73 W. Va. 156, 51 L.R.A.(N.S.) 353, 80 S. E. 131.

For the reasons stated, the discharge prayed for is refused, and the relator remanded to the custody of the authorities of the city of Huntington.

Lynch, J., absent.

WEST VIRGINIA PUBLIC SERVICE COMMISSION.

JAMES SMITH et al.

v.

HOWARD NUNNELLY et al.

[Case No. 387; Formal Complaint No. 48.]

CHARLESTON INTERURBAN RAILROAD COMPANY

v.

CLYDE SMITH et al.

[Case No. 388; Formal Complaint No. 49.]

Automobiles — Jitneys — Common carriers — Public service business — Jurisdiction of Commission.

1. Jitneys operated in the same portion of a city in which street cars are operated and in more remote parts where there are no car lines, maintaining regular routes, schedules, and service, carrying indiscriminately all persons desiring to ride, and charging a uniform fare, are common carriers of persons, and are also engaged in a public service business, within the operation of a statute extending the jurisdiction of the Commission over common carriers of passengers and those engaged in any public service business, irrespective of whether the operators are a corporation, firm, or individual.

Constitutional law — Delegation of powers — Jitneys.

2. The legislature has the power to grant to the Public Service Commission the right to regulate and control the operation of jitneys.

Automobiles — Jitneys — Regulation — Power of Commission.

3. Under the Public Service Commission act, which requires every person, firm, or corporation engaged in a public service business to maintain adequate and suitable facilities, and to give reasonable, safe,

---

Note.—In Re Inglesby, Case No. 132, March 8, 1921, the Utah Commission, in authorizing the transfer of a certificate from an individual to a corporation, was of the opinion that the service could be more efficiently directed through a responsible corporation, instead of individuals. (P.U.R.1921C, 635, 636.)

Note.—Ordinances.

An ordinance requiring a licensed auto bus to maintain a regular schedule from 6 A. M. to 12 midnight for at least six days a week, may afford such immediate protection to the public safety and adequate and proper traveling facilities as to be within the provisions of a city charter permitting ordinances that preserve the peace, health, or safety of the public to go into effect immediately upon passage, without waiting for an elapse of thirty days. Ex parte Lee (1915) — Cal. App. —, 153 Pac. 992. (P.U.R.1916D, 6.)

and sufficient service without discrimination, and empowers the Commission to enforce such facilities and service, the Commission has the right to regulate and control the operation of jitneys which are common carriers of persons and engaged in a public service business.

Automobiles — Jitneys — Exclusive regulation by local authorities.

4. The West Virginia Commission deemed it unwise or unnecessary to establish rules and regulations for the operation of jitneys in a city whose charter power in such respect was much broader than that of the Commission and had been exercised by the enactment of a comprehensive ordinance, and which city could supervise and control jitneys more effectively than the Commission.

Discrimination — Jitneys — Negroes.

5. A complaint against operators of jitneys for refusing to carry negroes was dismissed without prejudice upon their having abated the discrimination.

[August 19, 1915.]

PETITION of James Smith et al. charging defendants with unlawful discrimination in the carriage of passengers in the operation of jitney busses, etc., and asking for relief; dismissed without prejudice.

PETITION of Charleston Interurban Railroad Company, a corporation, charging defendants with unlawful discrimination, etc., and asking supervision and regulation of jitney bus business in city of Charleston; dismissed without prejudice.

In re jurisdiction, rules, and regulations relative to the operation of jitney busses.

Appearances: Herbert Fitzpatrick, Governor W. A. MacCorkle, T. S. Clark, and W. G. MacCorkle, counsel for petitioner Charleston Interurban Railroad Company; Geo. W. McClintic and C. R. Kimbrough, counsel for petitioners James Smith et al.; W. W. Werts, counsel for defendants; John Marshall, attorney for Parkersburg, Marietta Interurban Railway Company; Smith Hood, superintendent M. V. T. Company; Geo. I. Neal, attorney for Ohio Valley Electric Railway Company; Fred Paul Crosscup, president Charleston-Dunbar Traction Company; S. B. Avis, attorney for Public Service Commission.

Morgan, Commissioner: James Smith, Bernard Clare, and Alfred Graves, complainants, filed their joint petition on the 6th day of July, 1915, against Howard Nunnelly, A. Farrell, Wm. Hanshaw, and the persons owning and operating on the streets of Charleston, West Virginia, motor busses bearing auto-

mobile licenses of the state of West Virginia Nos. 9882, 5290, 3642, 1430, 5715, 909, 5010, 1884, 1335, 5285, 5050, 2167, 5903, 1462, 853, and 665, defendants, alleging that said complainants were citizens and residents of the city of Charleston, and that they were negroes; that the defendants (the names of the persons operating the busses bearing the above numbers being to said complainants unknown) were engaged in the business of common carriers in the city of Charleston transporting for hire upon, along, and over the streets and highways of the said city by means of automobiles or motor busses, commonly known as jitney busses, and that said defendants and each of them had violated the Constitution and the acts and laws of the state of West Virginia by declining and refusing to receive and carry said complainants as passengers on account of their being members of the colored race; that said refusal on the part of said defendants to receive and carry complainants was an unlawful discrimination, and that said discrimination was unreasonable, unlawful, and unjust, and that the service established and maintained by said defendants was not reasonable, safe, sufficient, just, and fair, and praying that the Commission enter an order commanding said defendants, and each of them, to cease and desist from the violations of the acts and laws referred to in said petition, and for other relief.

On the same day an order was entered requiring the defendants to satisfy said complaint, or make answer thereto within ten days after service on them of a copy of said order.

On the 19th day of July, 1915, the defendants filed their joint answer to said petition, admitting that they were the owners and operators of said motor busses, commonly known as jitney busses, and that they were operating the same upon, along, and over the streets of Charleston, for hire, by transporting persons from one point to another for the sum of 5 cents, and that it might be true that some of the drivers of said jitney busses (through ignorance of the law) had refused to carry persons of the negro race in said vehicles; said defendants alleging in their said answer that they would henceforth comply strictly with the law, and that from the time of filing of said answer and forever afterward they would carry any and all persons, regardless of color or previous conditions of servitude, to any and all points

within the city of Charleston. Defendants further stated that they did not object to the Commission entering any reasonable order in the case, but denied the jurisdiction of the Commission in the premises.

The Charleston Interurban Railroad Company, a corporation duly created and organized under the laws of the state of West Virginia, on the said 6th day of July, 1915, filed its petition against Clyde Smith and other persons, whose names were alleged to be unknown to said petitioner, engaged in the business of common carriers upon the streets and highways of the city of Charleston, by use of vehicles commonly known as jitney busses, alleging, among other things, that it was carrying on the business of a common carrier by operating a street railroad in the city of Charleston, and other places adjoining and near said city, and that it had expended in the construction, maintenance, and equipment of its said railroad more than $1,000,000; that it paid an annual license tax for the use of the streets of the city $100 per mile of its track; that it was operating its cars in the city of Charleston under a franchise granted by said city to its lessor, the Kanawha Valley Traction Company; that it had provided itself and was equipped with a sufficient number of modern, comfortable cars to afford ample accommodations for the public desiring to travel thereon; that it had in every respect complied with the laws of the state of West Virginia, and with the numerous requirements of its franchise, and discharged its duties and obligations as a common carrier of persons upon and over its lines of street railway; that the defendants were engaged as common carriers of persons, for hire, in and upon the streets and highways of the city, in vehicles known as jitney busses, in competition with petitioner, and that said defendants did not maintain any routes or schedules, and did not furnish a regular service in any part of the city; that they did not pay any license tax to said city, or any compensation for the use of the streets of said city; that they did not run at regular times and on regular routes, but gathered at congested places of traffic where patrons of petitioner assembled to board its cars and sought to induce such patrons to ride in their jitney busses instead of upon cars of petitioner; that the lives of persons upon the streets, and safety of persons riding in the busses, were endangered; that the owners and drivers of

said vehicles were wholly without responsibility and regulation; that they refused to carry persons of the negro race in their vehicles, upon like terms and conditions that they carried persons of other races; that they were carrying on their business in an unreasonable, unsafe, unfair, and unjust manner to petitioner and to the public, and praying that the Commission would enter an order fixing such lawful and reasonable rates and practices, rules and regulations, governing the business of said defendants as should be proper and just, etc.

On the filing of the foregoing petition an order was entered requiring the defendants to satisfy said complaint, or make answer thereto within ten days after the service of a copy of said order.

On the 19th day of July, 1915, an answer on behalf of all the defendants referred to in the foregoing petition was filed, in which it was admitted that the plaintiff was a duly organized corporation, and was operating its cars in the city of Charleston under a franchise from said city, in the manner set forth in said petition. Said defendants further admitted that they were operating jitney busses upon, along, and over the streets of the city of Charleston for hire, and charging the sum of 5 cents for carrying a passenger to any point of the city; that they were carrying and offering to perform a service similar to that of petitioners, and in addition to carrying passengers to points on the streets of the city touched by the street cars, defendants averred that they carried passengers to the remote parts of the city where the street cars did not run. Defendants denied that they did not maintain any routes or schedule, and did not furnish regular service in any part of the city; denied that they did not pay a license tax to said city for operating their busses; alleged that they paid annually to said city the sum of $5 for each vehicle, also a license tax to the state of West Virginia, and that after the 28th day of July, 1915, they would be compelled to pay to the city an annual license tax of $24 for each vehicle. They denied that they solicited business, but only carried persons on request; further denied that they endangered the lives of their passengers, alleged that only experienced men operated said busses, and that they were operated with great care. Defendants denied that they were conducting an irregular business, without control or regulation, and in such a manner as to most seriously injure petitioner or other persons.

Defendants averred that they tendered with said answer their schedule of rates, and that they had established and maintained adequate and suitable facilities for carrying on the business as common carriers, and that the service given the public was being performed in a reasonable, safe, sufficient, just, and fair way; denied that they were giving undue and unreasonable preference and advantage to certain localities; denied that they were subjecting certain persons of the negro race to undue, unreasonable prejudice and disadvantage; averred that they were carrying and would continue to carry any and all persons of the negro race that desired to be carried. It was further alleged in said answer that an ordinance had been passed by the city of Charleston, which would become effective on July 28, 1915, requiring all drivers of jitney busses to give bond in the penalty of $2,500 for the faithful and careful operation of said vehicles. Defendants prayed that the prayer of petitioner be denied, and that they be allowed to operate their said vehicles under the ordinance of said city.

On the 6th day of July, 1915, after the filing of the foregoing petitions, the Commission, of its own motion, issued a formal notice of a conference or hearing to be held at the office of the Commission, in the city of Charleston, on the 23d day of July, 1915, for the purpose of considering

"(1) Whether or not the Commission has jurisdiction over persons engaged in the business commonly known as jitney bus business; and

(2) If the Commission has such jurisdiction, what rules and regulations, if any, it should adopt governing such business."

Public notice of said conference or hearing was given through the press. The parties to the foregoing proceedings were notified that the questions arising in said petitions and answers would all be considered and heard together at said conference or hearing; and an opportunity was given to all parties interested in said proceedings, or the questions arising on said notice, to appear and be heard.

A hearing was had on said petitions, answers, and notice (both cases being heard together), at Charleston, on the 23d day of July, 1915, at which time learned and instructive arguments were delivered on the questions under consideration, and since said hearing elaborate briefs have been filed with the Commission.

No evidence was introduced at said hearing except "an ordinance regulating the operation of motor vehicles (commonly known as jitney busses, etc.)," which was passed by the common council of the city of Charleston on the 28th day of June, 1915, was filed on behalf of the defendants, and, on motion, leave was granted the Charleston Interurban Railroad Company and Clyde Smith et al. to file an agreed stipulation of facts, which was later filed with the Commission.

[1] The first question to be considered and determined is whether this Commission has jurisdiction over the operation of jitney busses in the state. If it has such jurisdiction, it derives same under § 3, chapter 8, Acts of the Legislature 1915, which provides:

"The jurisdiction of the Commission shall extend to and include:

"(a) Common carriers, railroads, street railroads, express companies, sleeping car companies, freight lines, car companies, toll bridges, ferries, and steam and other boats, engaged in the transportation of freight and passengers; . . . (c) All other public service corporations and all persons, associations, corporations, and agencies employed or engaged in any of the businesses hereinbefore enumerated."

Then follows this broad provision:

"The words 'Public Service Commission' used in the act shall include all persons, association of persons, firms, corporations, municipalities, and agencies engaged or employed in any business herein enumerated or in any other public service business whether above enumerated or not, whether incorporated or not."

It will be readily observed that, if the Commission has jurisdiction in these proceedings, it will be because the defendants are engaged in the business of "common carrier," or that of "public service," or both. It matters not whether the business is carried on by a corporation, firm, or individual, the gist of the matter being the kind of service rendered.

It is admitted by the answer of the defendants that they are engaged in performing and offering to perform a service similar to that being performed by the petitioner, the street railroad company, and that in addition to operating in the same portions of the city in which said petitioner operates, said defendants carry

and transport passengers to remote parts of the city where street cars are not operating, and that they maintain regular routes, schedules, and service, and that they carry indiscriminately any and all persons desiring to ride in said vehicles at the uniform charge of 5 cents.

It is stipulated in the agreement between petitioner, Charleston Interurban Railroad Company, and defendants, Clyde Smith et al., filed in this case, that the jitney busses in the city, engaged in the business as carriers, are consolidated and combined into an association, and that said association controls the jitney bus traffic of the city.

At common law the term "common carrier" did not embrace a carrier of passengers, the term applying to carriers of goods only, and creating the liability of an insurer of the goods so carried. Our statutes nowhere define the term "common carrier." However, the supreme court of the state in Gillingham v. Ohio River R. Co. 35 W. Va. page 588, 14 L.R.A. 798, 29 Am. St. Rep. 827, 14 S. E. 243, defines a common carrier of passengers as one who undertakes, for hire, to carry all persons indifferently who may apply for passage so long as there is room, and there is no legal excuse for refusing.

The Illinois Public Utilities Commission, under "An Act to Provide for the Regulation of Public Utilities," has recently decided that where "the owner of a number of automobiles who advertised in various newspapers and through printed circulars that he is engaged in the business of transporting passengers by motor busses over and along certain designated streets in a city, and has specified in such advertising the routes to be taken by his motor busses, the rate of fare to be charged and a time schedule, and who has held himself out to the public as a common carrier for hire, offering to transport all persons desiring to ride along the routes taken by his motor busses, is a common carrier of persons, and consequently a public utility within the meaning of the Public Utilities act."

And the Georgia Railroad Commission, under an act of the legislature of that state, similar in many respects to our statute, recently held that where a jitney association had its regular advertised routes, schedules of charges, and the service offered and rendered by it was common to all the public, it rendered to

the public practically the same character of service as that rendered by an electric trolley system, and was therefore a common carrier of persons.

It was contended in that case, as has been suggested in this proceeding, that if the Commission undertook to regulate the jitney it must exercise the same powers as to taxicabs, hacks, drays, and other like minor carriers, but the Commission stated in its opinion in the Georgia case that the hack and dray business was different to that of the jitney association, in that they "Had no definite routes or charges. Practically every service rendered by them is a special service rendered to an individual or individuals . . . The vehicle for the time is exclusively for his use, and, without his consent, no one else can enter it."

Thus, clearly indicating that it was the character of the service rendered that must be looked to in determining the question of regulation.

Wyman on Public Service Corporations, vol. 1, § 187, says: "The latest development in urban service . . . is the taxicab. These, being automobiles, are subject to peculiar regulation in their use of the highways. All the general laws governing the operation of automobiles relate to them, and a special license is often necessary for these who engage in the business for hire. If they ply the streets for hire they are undoubtedly holding themselves out as common carriers of passengers."

Section 160: "The conception of carriage itself involves not only transportation, but control during the transit. To be common carriage this particular business must be upon the basis of public service."

Bouvier's Law Dictionary: "Such as undertake, for hire, to carry all persons indifferently who may apply for passage, so long as there is room and there is no legal excuse for refusing."

Applying the rule as enunciated by the supreme court in the Gillingham Case, and as laid down by Judge Poffenbarger in an able opinion in the case of Ex Parte Dickey, — W. Va. —, L.R.A. —, ante, 93, 85 S. E. 781, in which it was held that (meaning jitney bus operators) were engaged in the common carriage of persons and also in the public service, and the doctrines laid down by the Illinois and Georgia Commissions, and numerous other authorities cited and that might be cited, which we be-

lieve to be sound in principle, the Commission is of the opinion that the manner in which the jitney busses are operated in the city of Charleston places them in a class with the street cars of said city as common carriers of persons.

It necessarily follows that if they are common carriers of persons they are likewise engaged in a public service business.

It is such a public service that can and should be regulated, and, if so, how?

In the case recently decided by the supreme court of this state, Ex Parte Dickey, heretofore cited, Dickey had been arrested for violating an ordinance passed by the Commissioners of the city of Huntington, limiting the operation of jitney busses, and applied for his discharge on a writ of habeas corpus. In considering the question of the constitutionality of the ordinance, the court, among other things, said: "Under the broad power given by this charter" (meaning the charter granted by the legislature to the city of Huntington) "to grant, refuse, and revoke licenses to hotel keepers and operators of vehicles kept for hire, and to regulate them for the interest and convenience of the inhabitants of the city, the commissioners may do anything respecting these subjects that the legislature itself could do, and as we have shown, that power is almost unlimited."

The court held in that case that the city of Huntington had the "power to prescribe the routes and hours of service of motor vehicles, commonly called 'jitney busses,' . . . and to require from them idemnity against injury to persons and property occasioned by the operation thereof."

[2, 3] If the legislature can vest a municipality with power to regulate and control the operation of vehicles, no reason is perceived why it could not grant similar powers to the Public Service Commission.

Section 4 of the Public Service Commission act provides that "every person, firm, or corporation engaged in a public service business in this state shall establish and maintain adequate and suitable facilities, and shall perform such service in respect thereto as shall be reasonable, safe, and sufficient, and in all respects just and fair. . . ."

Section 5 provides that "the Commission is hereby given the power to investigate all methods and practices of public service

corporations, and to require them to conform to the laws of the state . . . and change or prohibit any practice, device, or method of service in order to prevent undue discrimination or favoritism as between persons. . . ."

Section 7 provides that "it shall be unlawful for any public service corporation subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular character of traffic or service, in any respect whatsoever, or to subject any particular person, firm, corporation, company, or locality, or any particular character of traffic or service, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." [W. Va. Anno. Code 1913, chap. 150, §§ 639, 640, 642.]

Having ascertained that the manner in which the jitney busses are operating in the city of Charleston stamps them as common carriers of persons, and that they are engaged in a public service business, and that the legislature has the power to grant Commissions and municipalities, and bodies of like character, the right to regulate and control the operation or business of said vehicles, it is apparent that said right is granted to the Public Service Commission by the provisions of the statute above quoted.

[4] As to the extent of the jurisdiction and powers of the Commission in respect to the regulation of said business it is not necessary at this time to decide.

That the jitney business should be regulated cannot seriously be denied. The enterprise sprang into being throughout the country so suddenly, and in many places with such gigantic proportions, that the public was amazed. The streets of the cities suddenly filled with its vehicles, which run to and fro, without regulation, and in many instances without responsibility. It may operate in the congested parts of the city alone, and at any hour it desires. On the other hand, the trolley companies that have expended vast amounts of capital in installing their systems and equipping themselves for the use and benefit of the public, as well as for their own benefit, are obligated to run their expensive plants every day, "at all hours, under all weather conditions. They must give service whether there are passengers or

not." In a great many instances they carry passengers distances that are unprofitable, and operate their cars under stringent regulations.

It would certainly be unjust and unfair, and, in fact, a rank discrimination, to impose the burden of regulation on one class of common carriers, and not subject another class, performing almost identically the same class of service, to any regulation whatever.

As was well said in one of the briefs filed in this case: "One carrier might conduct its business as it saw fit and indulge in practices that were unfair both to its competitor and to the general public, which might result in the destruction of the competitor which was regulated, and the survival of the carrier which could not be regulated and which, when its competitor was put out of business, could run its business as it pleased, to the detriment of the general public."

It could reduce its service at will or withdraw it absolutely. Without regulation it might become a detriment instead of a benefit to the public.

There is no just reason why the jitney bus business should not be subjected, like other common carriers of persons, to reasonable regulations. Its future success is largely conjectural. If it should develop that it is a better and cheaper means of transportation of passengers than that of the trolley systems, they may be eventually supplanted by it. As was stated in the Georgia case, hereinbefore cited, such regulation should not "be exercised for prohibitory or strangulation purposes." The problem of regulation should be approached in a rational manner, with a view of protecting the rights of the people as well as those of private interests.

The charter granted the city of Charleston by the legislature, among other things, provides:

"The council of said city shall have and is hereby granted the power . . . to have control of all streets, avenues, roads, alleys, and grounds for public use in said city, and to regulate the use thereof and driving thereon; . . . to make suitable and proper regulations in regard to the use of the streets, public places, sidewalks, and alleys by street cars, foot passengers, animals, vehicles, motors, automobiles, traction engines and cars, and to regulate the running and operation of the same so as to prevent

obstruction thereon, encroachment thereto, injury, inconvenience, or annoyance to the public; . . . to license, tax, regulate, or prohibit . . . things or business on which the state does or may exact a license tax."

The council of the city of Charleston on the 26th day of June, 1915, passed an ordinance entitled:

"An Ordinance Regulating the Operation of Motor Vehicles (Commonly Known as Jitney Busses), and Providing for the Issuance of Permits to Owners and Drivers thereof, and Providing Penalties for the Violation thereof."

Said ordinance makes it unlawful for any person, firm, or corporation, either as principal, agent, or employee, to use or occupy any public street in the city of Charleston, with a motor vehicle, in the manner defined in the ordinance, without a permit or license. It imposes an annual license tax of $24 for each vehicle, requires bond in the penalty of $2,500, conditioned that the operator will not violate any of the provisions of the ordinance, and that he shall pay any and all lawful claims for damages for injury to persons or property sustained by passengers in such vehicles, or by any other person or persons that may be killed or injured or suffer damages to property by reason of the operation of said motor vehicles. It requires the vehicles to be operated by experienced drivers; designates the section of the city where said vehicles shall operate, requires them to operate certain hours of the day and not less than six days in each week, and requires them to carry any and all persons, indiscriminately, that offer themselves for carriage and tender the fare. Said ordinance contains many other requirements and restrictions not hereinbefore enumerated, which said ordinance, under the provisions of the charter of said city, became effective on the 28th day of July, 1915, —five days after the hearing of these cases before the Commission.

By reference to the charter of the city of Charleston and to the acts of the legislature creating the Public Service Commission, it will be readily observed that the powers of regulation over the operation of the business under consideration, granted by the legislature to the city of Charleston, are much broader than those granted the Commission. In addition to this fact, the municipal authorities, under whose constant observation a business is being

operated, can regulate, control, and supervise said business far more effectively than can a board or commission not so situated.

The petitions in this proceeding were both filed after the passage of the said ordinance by the council of the city of Charleston, but before it went into effect, and before it could possibly be known whether or not the provisions of this ordinance would operate so as to furnish proper and adequate regulation of the jitney business.

It should not be, and it is not, the intention of the Commission to interfere with the local authorities in the regulation of purely local matters, over which the local authorities have full and complete jurisdiction and control.

The Interstate Commerce Commission in the case of Hastings M. Co. v. C. H. M. & St. P. R. Co. said: "The Interstate Commerce Commission may, in its discretion, decline to interfere with rates, etc., mainly local in their bearings, where it is clear that the Railroad Commission of the state has ample authority in law and perfect control over the situation."

It would appear that inasmuch as the matters in controversy are purely local, and that the local authorities have ample regulatory powers over the operation of the business in question, and are now regulating said business, that this Commission should not interfere with the operation thereof, and that it should remain, for the present at least, under the supervision and control of the municipal authorities of the city of Charleston.

[5] In regard to the complaint against defendants in refusing to carry passengers who were members of the colored race, the defendants by their answers have admitted that this was an unlawful discrimination, and agreed to carry thereafter all persons, regardless of race, color, or previous conditions of servitude. So, having conceded the relief asked for in this particular, it is unnecessary to enter into a discussion of this question.

The Commission is therefore of the opinion, for the reasons hereinbefore stated, to dismiss the petition of James Smith et al., and of the Charleston Interurban Railroad Company, without prejudice to said petitioners to apply at any time in the future to said Commission for redress of any grievances affecting them, or either of them, and it is accordingly so ordered.

The Commission does not deem it necessary at this time to pro-

mulgate any rules relative to the regulation of the jitney bus business.

Northcott, Chairman, Dawson, Commissioner, concur.

A new company which takes over the property of an established automobile transportation line must obtain a new certificate of public convenience and necessity, as well as new permits from the local authorities. Re United States (Cal.) Decision No. 5106, Application No. 3314, Feb. 5, 1918. (P.U.R.1918C, 319.)

WISCONSIN SUPREME COURT.

R. J. MONROE et al.

v.

RAILROAD COMMISSION OF WISCONSIN.

(— Wis. —, 174 N. W. 450.)

Automobiles — Jurisdiction of Commission.

Under Wisconsin statutes of 1917, §§ 1797-62 to 1797-68, the Wisconsin Railroad Commission has no general supervisory power or control over motor vehicles operating in passenger transportation after it has once acted in issuing the required certificate authorizing their operation.

Commissions — Jurisdiction — Source.

Statement of rule that jurisdiction of Commissions is purely statutory, p. 728.

(VINJE, J., dissents.)

[November 4, 1919.]

APPEAL from Circuit Court, Dane County, E. Ray Stevens, Judge, from an order sustaining a demurrer to the complaint in an action by R. J. Monroe and another against the Wisconsin Railroad Commission; reversed and remanded, with directions.

Prior to the commencement of this action the plaintiff had been operating motor vehicles for the carriage of passengers for hire in the city of Racine, Wisconsin, under the provisions of chapter 546, Laws of 1915, being §§ 1797-62 et seq. Having given the required bond and made due application for and obtained the certificate provided for in said law from the defendant, plaintiffs respectively paid the license fee required under

the ordinance of said city, and obtained from its mayor and common council licenses to so operate.

Four routes appear to have been designated by said Railroad Commission for the operation of such motor vehicles in the city of Racine on the printed form of applications of the respective plaintiffs, and one of such routes numbered one, and the territory four blocks east, west, north, and south, was selected by plaintiffs, respectively, as being the general route or territory over which it was proposed to operate such motor vehicles.

The Milwaukee Light, Heat & Traction Company, operating a street railway system in the said city of Racine, made application to the defendant Commission, requesting that an investigation be made and an order issued authorizing an increase in the fares for street railway service in the said city on the ground that the prevailing rates of fare were inadequate to care for the increased operating costs; and, further, that a large number of automobiles carrying passengers for hire, commonly known as jitneys, operated in the city of Racine, and that the service afforded by the same was not adequate or systematized, and that the said jitneys are substantially unregulated and untaxed, and that the revenues of said street railway system have been substantially lessened in consequence of such operation.

During the pendency of the hearing of such application the Commission on its own motion determined to make further investigation relating to the routes and service prescribed for bonded carriers or jitneys in the said city, with a view of possible change and restricting of the routes in the city of Racine over which said bonded carriers or jitneys may operate, and thereupon gave notice that a hearing would be had before the Commission to further investigate said matters and all questions relating to the operation of bonded carriers or jitneys in the city of Racine, both as to routes and service, and fixed a time and place for such hearing.

Objection was made on behalf of the plaintiffs and others similarly situated to the jurisdiction of the Railroad Commission to take such proceedings or make any order in the premises with relation to the operation of such motor vehicles.

December 28, 1918, an order was made by said Railroad Commission as follows: "In the Matter of the Application of the

Milwaukee Light, Heat & Traction Company, for a Revision of the Rates of Fare on Its Street Railway System in the City of Racine.

"In the Matter of the Investigation on Motion of the Commission of Routes and Service of Bonded Carriers or Jitneys Within the City of Racine.

"An order was entered in the above-entitled matter on September 9, 1918, with respect to street railway rates in Racine, jurisdiction being retained with respect to the routes and service of bonded carriers or jitneys. The Commission has kept in touch with the local situation since that time, and has made some further study of the routes and service of the bonded carriers.

"At the present time there are no operators on routes Nos. 2, 3, and 4 and service on these routes has at no time been satisfactorily developed. It appears advisable, therefore, to discontinue these routes, and they are hereby canceled.

"There are at present 10 operators on route No. 1. In view of the popularity of this route, no change appears to be advisable. However, until there is further development of other possible routes which would be serviceable to the community, we deem it to be in the interest of the public to restrict the number of operators on route No. 1 to ten.

"A new route is hereby approved and designated as route No. 2. The route is as follows: (Description omitted.) "Until the above-described route is developed and occupied by at least ten operators, no further applications for route one will be granted, except to fill vacancies caused by the withdrawal of present operators on that route. New routes will be designated from time to time should conditions warrant, and if necessity therefor arises further restrictions will be established. Jurisdiction in this proceeding is retained for this purpose."

Thereupon the plaintiffs commenced this action on their own behalf, and on behalf of others similarly situated to have said order set aside, vacated, and declared null and void. The defendants demurred to such complaint, and, upon the demurrer being sustained, the plaintiffs appealed.

Appearances: J. Elmer Lahr, of Milwaukee, for appellants; John J. Blaine, Attorney General, and J. F. Baker, Assistant Attorney General, for respondent.

Eschweiler, J. (after stating the facts as above). The question involved in this appeal is whether there is a general supervisory power of control by the Railroad Commission after it has once acted, in issuing the required certificate over the motor vehicles operating in passenger transportation, commonly known as jitneys.

The text or substance of chapter 546 of the Laws of 1915, creating §§ 1797–62 to 1797–68 of the Statutes, so far as deemed necessary for this case, are as follows:

Section 1797–62 provides that the operator of any such motor vehicle "is hereby declared to be a common carrier, and is hereby required to furnish reasonable and adequate service at just and reasonable rates, and is hereby required to operate over such general routes or within such territory, and during such hours as may be reasonably required for the accommodation of the public in accordance with the following provisions."

Section 1797–63 provides that no such vehicle shall be operated until there shall have been filed with and accepted by the Railroad Commission of Wisconsin a good and sufficient bond in amounts specified for all damages that may be recovered against the operator of such vehicle by reason of the negligent use and operation of such vehicle. And in case such bond so filed should become inoperative, such vehicle shall not be operated until a bond meeting the requirements shall have been filed.

Section 1797–64: "Such bond shall be accompanied by an application for the acceptance thereof by the Railroad Commission, which application shall state the name and residence of the applicant, the general route, or the territory, over which it is proposed to operate the motor vehicle described in such bond, the proposed hours of such operation, and the rate of fare to be charged for carriage therein.

"If the Railroad Commission shall determine that such bond complies with the provisions of § 1797–63 and that the rates specified in the application accompanying the same are reasonable for such character of service, and that the proposed general route, or territory to be covered, and the hours of such operation are reasonably adapted to the accommodation of the public, it shall, regardless of any other service now furnished, accept such bond and shall thereupon issue to such applicant a cer-

tificate setting forth the fact that the applicant has, in respect to the vehicle described therein, complied with the provisions of § 1797–63 and § 1797–64."

Section 1797–65: "Every order and determination of the Railroad Commission under the provisions of § 1797–64 shall be subject to review in the manner provided by § 1797m–65 to § 1797m–71."

Section 1797–67: "Any person, firm, or corporation operating any motor vehicle described in § 1797–62 who shall fail to comply with the provisions of § 1797–63 and § 1797–64 and § 1797–66, shall transport in any such vehicle a larger number of passengers than the number specified in such bond as the carrying capacity of such vehicle, shall charge a rate of fare other than that specified in the application accompanying such bond, or shall fail to operate such vehicle upon the general route, or within the territory, and during the hours set forth in such application, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than $10 nor more than $100 for each offense and in default thereof may be committed to the county jail for not less than ten nor more than ninety days."

Section 1797–68: "Every city, village or town within or through which any motor vehicle described in § 1797–62 shall be operated may require that local consent for the operation thereof be procured and as a condition of such consent may require reasonable compensation for the repair and maintenance of pavements and bridges, and compensation for the regulation of street traffic, and for any other expense occasioned by the operation of such motor vehicle."

The following situation presents itself: (1) There is no express language either in the chapter here involved or the law establishing the Railroad Commission, which provides for any such subsequent supervision and control.

(2) The obligation imposed by § 1797–62, Stat. declaring such motor vehicles to be common carriers and to furnish reasonable and adequate service at just and reasonable rates, and to operate within such territory and during such hours as may be reasonably required for the accommodation of the public, would indicate that it refers to a continuing service and operation which necessarily, from the nature of such service and the

constantly changing conditions, require modifications from time to time.

(3) That unless such power as was exercised by the Commission in the instant case is within its jurisdiction there is no other board, Commission, or tribunal, except the courts, by which supervisory control could be exercised or the questions as to whether the rates and service are reasonably adequate for the accommodation of the public, be determined.

(4) That by § 1797–68, Stat., above quoted, the several municipalities in which such service is proposed may give or withhold local consent for their operation, and as a condition to such consent may require a reasonable compensation.

That the hours of operation, the territory to be traversed, and the rates of fare to be charged are all conditions that necessarily are subject to change from time to time and need constant supervision and change, and that the power to determine like questions involved has already been vested by the legislature in the Railroad Commission as to similar questions arising in the much broader fields of general railroad transportation, urban, and interurban street railway service, and of the public utilities of the state is very persuasive in favor of the conclusion reached by the court below that such power is in the Railroad Commission.

But the consideration of other matters involved compel us to reach the opposite conclusion.

The advent of such operation of automobiles in the field of common carriers of passengers on the streets of the various municipalities in this state produced a number of bills presented in both houses of the legislature of 1915. They were finally all referred to a joint committee, with members from both houses, and public hearings had, and after rejection of a number of the proposed bills and suggested amendments thereto the chapter as now found in the sections above quoted was finally reported to the two houses as substitute amendment No. 2S to 464S and adopted.

Among the provisions so presented, considered, and subsequently rejected were the following: (a) In event of the proposed change of routing by the jitneys a supplemental certificate to such effect was to be issued by the Railroad Commission; (b) that in case any such jitney should, without ten days prior no-

tice thereof to the Railroad Commission, at any time abandon its regular schedule, any deficiency thereby caused should not be considered in proceedings involving the sufficiency of street railway service in the same municipality; (c) for the subsequent cancelation by the Railroad Commission of such certificate after notice and application therefor and then a return of the insurance policy; (d) that before any ordinance should be granted by a city or village for permission to use the streets of such municipality for such service such certificate should be first submitted to and approved by the Railroad Commission as an amendment to § 940b, Stat.; (e) that a proposed amendment to § 1797–2, Stat., to provide that all motor vehicles for the carriage of persons for hire for the purpose of affording a means of local street or highway transportation, should be within the term "railroad."

(Manifestly to bring the vehicles in question here under the general control and regulation of the Railroad Commission.)

It is therefore evident that the legislature considered and rejected provisions which would have quite plainly and expressly given to the Railroad Commission such power as was attempted to be exercised by it in the present instance.

By § 1797–67, Stat., above quoted, express provision has been made, declaring certain violations of the act to be misdemeanors, and providing for their punishment, but no provision is to be found declaring that a violation of rules, regulations, or provisions made or declared by the Railroad Commission subsequent to the issuing of the original certificate shall be so punished.

On the other hand, any railroad by § 1797–27, Stat., or public utility by § 1797m95, Stat., is subject to a penalty for violating or neglecting or refusing to obey any lawful requirement or order made by the Commission or any judgment made by any court upon its application for any such violation, neglect, or refusal.

We should have, therefore, if defendant's construction of the statute were adopted, the somewhat anomalous situation of an operator of such vehicle being subject under § 1797–67 to a conviction as for a misdemeanor and a consequent fine for violation of the conditions of the original certificate issued by the Commission, and yet not subject to any penalty whatsoever so

far as can be found in this act for violating any subsequent change of any old or of any new order that might be made by the Commission.

The Railroad Commission being a tribunal of purely statutory creation, its power and jurisdiction must be found within the four corners of the statutes creating it, and we can find within our statutes no such power or jurisdiction as was attempted to be exercised in the present case, and it follows therefrom that the demurrer to plaintiff's complaint should have been overruled.

Order reversed and record remanded, with directions to the circuit court to overrule defendant's demurrer, and for further proceedings according to law.

Vinje, J., dissenting.

Note.—Commission Powers.

In Re Wisconsin Jitneymen's Asso. P.U.R.1920A, 915, Nov. 6, 1919, the Wisconsin Commission held that it had no power to regulate the rates or other features of jitney service after having passed upon the application of the individual jitney operators in the first instance.

Note.—Public Convenience.

In Re Santa Clara Valley Auto Line, Decision No. 4674, Application No. 3159, Sept. 26, 1917, the California Commission, in denying an application for a certificate of convenience and necessity for the operation of a stage line between San Francisco and Palo Alto, said: "No person has a vested right to engage in a public utility service. The law looks not to the operator, but to the convenience and necessity of the public, and clearly contemplates that applications of this character shall be decided on the basis of this test alone, and not on the basis of the desires or necessities of the operators. Operators may be permitted to enter the field only at such times, and in such places, and under such conditions, as will best subserve the convenience and necessity of the public." (P.U.R.1918C, 319.)

UNITED STATES SUPREME COURT.

TERMINAL TAXICAB COMPANY, Incorporated, Appt.,

v.

CHARLES W. KUTZ, Oliver P. Newman, and Louis Brownlow, Commissioners of the District of Columbia, Constituting as Such Commissioners the Public Utilities Commission of the District of Columbia, et al.

(241 U. S. 252, 60 L. ed. —, 36 Sup. Ct. Rep. 583.)

[No. 348.]

Public utilities — Taxicab company — Governmental control.

1. A taxicab company is a common carrier within the meaning of the act of March 4, 1913 (37 Stat. at L. 938, chap. 150), § 8, and hence subject to the jurisdiction of the Public Utilities Commission of the District of Columbia as a "public utility" in respect of its exercise of its exclusive right under lease from the Washington Terminal Company, the owner of the Washington Union Railway station, to solicit livery and taxicab business from persons passing to or from trains, and of its exclusive right under contracts with certain Washington hotels to solicit taxicab business from guests, but that part of its business which consists in furnishing automobiles from its central garage on individual orders, generally by telephone, cannot be regarded as a public utility, and the rates charged for such service are therefore not open to inquiry by the Commission.

Commissions — Jurisdiction — Effect of not assuming.

2. The jurisdiction of the Public Utilities Commission of the District of Columbia over a public utility under the act of March 4, 1913 (37 Stat. at L. 938, chap. 150), § 8, cannot be defeated because such jurisdiction has not been assumed over other similar concerns, where the excuse offered by the Commission is that it did not consider that the omitted concerns did business sufficiently large in volume to come within the meaning of the act, and there is nothing to impeach the good faith of the Commission, or to give the concern included just cause for complaint.

[May 22, 1916.]

APPEAL from the Court of Appeals of the District of Columbia to review a decree which affirmed a decree of the Supreme Court of the District, dismissing the bill in a suit to restrain the Public Utilities Commission from exercising jurisdiction over the business of a taxicab company. Modified so as to restrain the exercise of jurisdiction over the rates charged by the company at its garage, and as so modified, affirmed.

See same case below, 43 App. D. C. 120.

The facts are stated in the opinion.

Appearances: Mr. G. Thomas Dunlop for appellant; Mr. Conrad H. Syme for appellees.

Mr. Justice **Holmes** delivered the opinion of the court:

This is a suit to restrain the Public Utilities Commission of the District of Columbia from exercising jurisdiction over the plaintiff. The Commission was created and its powers established by a section (§ 8) of an appropriation act, divided into numbered paragraphs. Act of March 4, 1913, chap. 150, § 8, 37 Stat. at L. 938, 974. By ¶ 2 of the section "every public utility is hereby required to obey the lawful orders of the Commission," and by ¶ 1 "public utility" embraces every common carrier, which phrase in turn is declared to include "express companies and every corporation . . . controlling or managing any agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire." Steam railroads, some other companies, and the Washington Terminal Company, are declared not to be within the words. The main question is whether the plaintiff is a common carrier under the definition in the act. The bill was dismissed by the supreme court, and the decree was affirmed by the court of appeals. 43 App. D. C. 120.

[1] The facts are agreed. The plaintiff is a Virginia corporation, authorized by its charter, with copious verbiage, to build, buy, sell, let, and operate automobiles, taxicabs, and other vehicles, and to carry passengers and goods by such vehicles; but not to exercise any of the powers of a public service corporation. It does business in the District, and the important thing is what it does, not what its charter says. The first item, amounting to about thirty-five hundredths of the whole, is done under a lease for years from the Washington Terminal Company, the owner of the Union Railroad Station in Washington, which we have mentioned as excluded from the definition of common carriers. By this lease the plaintiff has the exclusive right to solicit livery and taxicab business from all persons passing to or from trains in the Union Station, and agrees in its turn to provide a service sufficient in the judgment of the Terminal Company to accommodate persons using the station, and is to pay over a certain percentage of the gross receipts. It may be assumed that

a person taking a taxicab at the station would control the whole vehicle both as to contents, direction, and time of use, although not, so far as indicated, in such a sense as to make the driver of the machine his servant, according to familiar distinctions. The last facts, however, appear to be immaterial and in no degree to cast doubt upon the plaintiff's taxicabs, when employed as above stated, being a public utility by ancient usage and understanding (Munn v. Illinois, 94 U. S. 113, 125, 24 L. ed. 77, 84), as well as common carriers by the manifest meaning of the act. The plaintiff is "an agency for public use for the conveyance of persons," etc.; and none the less that it only conveys one group of customers in one vehicle. The exception of the Terminal Company from the definition of common carriers does not matter. The plaintiff is not its servant, and does not do business in its name or on its behalf. It simply hires special privileges and a part of the station for business of its own.

The next item of the plaintiff's business, constituting about a quarter, is under contracts with hotels by which it agrees to furnish enough taxicabs and automobiles within certain hours reasonably to meet the needs of the hotel, receiving the exclusive right to solicit in and about the hotel, but limiting its service to guests of the hotel. We do not perceive that this limitation removes the public character of the service, or takes it out of the definition in the act. No carrier serves all the public. His customers are limited by place, requirements, ability to pay, and other facts. But the public generally is free to go to hotels if it can afford to, as it is free to travel by rail, and through the hotel door to call on the plaintiff for a taxicab. We should hesitate to believe that either its contract or its public duty allowed it arbitrarily to refuse to carry a guest upon demand. We certainly may assume that in its own interest it does not attempt to do so. The service affects so considerable a fraction of the public that it is public in the same sense in which any other may be called so. German Alliance Ins. Co. v. Lewis, 233 U. S. 389, 58 L. ed. 1011, L.R.A. 1915C, 1189, 34 Sup. Ct. Rep. 612. The public does not mean everybody all the time. See Peck v. Tribune Co. 214 U. S. 185, 190, 53 L. ed. 960, 962, 29 Sup. Ct. Rep. 554, 16 Ann. Cas. 1075.

The rest of the plaintiff's business, amounting to four tenths,

consists mainly in furnishing automobiles from its central garage on orders, generally by telephone. It asserts the right to refuse the service, and no doubt would do so if the pay was uncertain, but it advertises extensively, and, we must assume, generally accepts any seemingly solvent customer. Still, the bargains are individual, and however much they may tend towards uniformity in price, probably have not quite the mechanical fixity of charges that attends the use of taxicabs from the station and hotels. There is no contract with a third person to serve the public generally. The question whether, as to this part of its business, it is an agency for public use within the meaning of the statute, is more difficult. Whether it is or not, the jurisdiction of the Commission is established by what we have said, and it would not be necessary to decide the question if the bill, in addition to an injunction against taking jurisdiction, did not pray that order No. 44 of the Commission be declared void. That order, after declaring that the plaintiff was engaged in the business of a common carrier within the meaning of the act, and so was within the jurisdiction of the Commission, required the plaintiff to furnish the information called for in a circular letter of April 12, 1913. What this information was does not appear with technical precision, but we assume that it was in substance similar to a later requirement of a schedule showing all rates and charges in force for any service performed by the plaintiff within the District, or any service in connection therewith. If we are right, this demand was too broad unless the business from the garage also was within the act. There is no such connection between the charges for this last and the others as there was between the facts required and the business controlled in Interstate Commerce Commission v. Goodrich Transit Co. 224 U. S. 194, 211, 56 L. ed. 729, 736, 32 Sup. Ct. Rep. 436. Although I have not been able to free my mind from doubt, the court is of opinion that this part of the business is not to be regarded as a public utility. It is true that all business, and, for the matter of that, every life in all its details, has a public aspect, some bearing upon the welfare of the community in which it is passed. But, however it may have been in earlier days as to the common callings, it is assumed in our time that an invitation to the public to buy does not necessarily entail an obligation to sell. It is assumed that

an ordinary shopkeeper may refuse his wares arbitrarily to a customer whom he dislikes, and although that consideration is not conclusive (233 U. S. 407), it is assumed that such a calling is not public as the word is used. In the absence of clear language to the contrary it would be assumed that an ordinary livery stable stood on the same footing as a common shop, and there seems to be no difference between the plaintiff's service from its garage and that of a livery stable. It follows that the plaintiff is not bound to give information as to its garage rates.

[2] Complaint is made that jurisdiction has not been assumed over some other concerns that stand on the same footing as the plaintiff. But there can be no pretense that the act is a disguised attempt to create preferences, or that the principle of Yick Wo v. Hopkins, 118 U. S. 356, 30 L. ed. 220, 6 Sup. Ct. Rep. 1064, applies. The ground alleged by the Commission is that it did not consider that the omitted concerns did business sufficiently large in volume to come within the meaning of the act. There is nothing to impeach the good faith of the Commission, or to give the plaintiff just cause for complaint. The decree, so far as it asserts the jurisdiction of the Commission, is affirmed, but it must be modified so to restrain an inquiry into the rates charged by the plaintiff at its garage, or the exercise of jurisdiction over the same.

Decree modified as above set forth.

Note.—License Fees.

The taxation and licensing of motor vehicles, both for regulation and for meeting the cost of highway construction and maintenance, is now general in the United States. Theories of taxation and licensing differ. One theory is that motor vehicles might be utilized as an evidence of ability to contribute to the miscellaneous general costs of government. However, in states like New York, where personal property has been virtually abandoned as a measure of taxpaying ability, this basis is not available as a justification of the charges on motor vehicles.

The more generally accepted theory is that taxation should be based upon the increased public expenses caused by motor vehicles. The phenomenal increase in the use of motor vehicles and the demand for improved highways which has accompanied this development has made the problem of motor vehicle taxation a very impor-

tant one, both from the point of view of the public treasury and from the point of view of the users of the roads.

The magnitude of the state debts for highway purposes is shown in the figures relating to the debts of New York state, where in 1899 the total of all state debts for highway purposes was about $3,500,000 or between 1 and 2 per cent of all state debts. In 1919 the state highway debt had grown to more than $143,000,000 or more than 21 per cent of state debts for all purposes. These debts are in addition to large amounts of current revenues expended for highway improvement and the amounts appropriated by local divisions of the state.

The character of the roads, whether they be level, smooth, and straight rather than hilly, rough, and crooked, has a much greater effect upon motor vehicle transportation than upon their use by horse drawn vehicles. An automobile on a good road may easily travel 250 miles between sunrise and sunset and perhaps only 50 miles on a really bad road. The improved road holds no such possibility of increase in the day's journey of the horse drawn vehicle. Thus it is evident that the demand for improved roads is for the most part in behalf of motor vehicles.

The element of public interest in almost every road might form a sound basis for charging a part of the cost to general tax funds in cases where the roads are used for business, as for example, in the case of a motor truck hauling provisions from rural sections to a city. The public at large, which purchases the provisions, is in fact a user of the road. If the charge be imposed directly upon the owner of the motor truck, the tax will be reflected in higher prices to the consumer. This has been used as the basis of an argument for opposing special charges on trucks on the ground that the entire public benefits directly from transportation over the road, the truck being the mere agent or servant of the public; but this contention overlooks the fact that if the true cost of the truck borne provisions is not charged to the purchasers of those provisions, the provisions carried by railroads are discriminated against.

The Joint Committee on Taxation and Retrenchment of the Senate and Assembly of the New York Legislature, March 1, 1922, in its report on suggested changes in motor vehicle taxation, said: "It seems to the committee that the true view is one which lies between these extremes [on the one hand, that the public build roads for itself free for all to use as they choose and that it is unfair to charge any part of the cost to any particular group of users, and on the other hand that the automobiles should bear the expense of construction and maintenance of the highways]. That there is a general public interest in the streets and highways is true, but it is equally true that when these streets and highways cost more than

they otherwise would because of the necessity of supplying accommodations to a particular group of users, such additional cost may be properly chargeable to those particular groups. The problem is to draw the line. Once drawn it determines the maximum amount which may be equitably assessed against the user under the revenue system as it now stands in this state."

After determining the proper proportion of the cost of upkeep of highways which should be placed upon motor vehicles, the basis of taxation must be considered. In the attempts to tax motor vehicles in proportion to their use of the roads there would seem to be no agreement in the various states as to what constitutes a measure of such use. Factors considered in states where a flat rate is not imposed are gross weight, seating capacity, horse power, list price, number of cylinders, and size of cylinders. In states where there is an additional tax on motor vehicles used as common carriers, the fee is based largely upon seating capacity.

In addition to the state license fees or taxes, municipalities in several states impose special taxes and license fees. In California there are also some counties which collect annual licenses and impose bonds.

On April 13, 1922, a bill was introduced in the House of Representatives and referred to the Committee on Ways and Means providing for an annual tax of $2 on all motor vehicles in use on the post roads in the United States, the revenue derived therefrom to be used in the construction of such roads. The clerk of the United States District Court of the district where the owner of a motor vehicle resides is required to assign to the vehicle a distinctive number and to issue a receipt for the payment of the tax showing the registration number. Provisions are also made relating to the conveyance of vehicles and penalties for conveyances without a certificate that the tax is paid.

Taxes imposed according to horse power vary from 25 cents per horse power to 60 cents per horse power. In states where there is a fixed fee for vehicles under a stipulated horse power the rate has been fixed from $5 to $15 for cars under 25 horse power. In Colorado, the fee is $2.50 for vehicles under 20 horse power. Maximum rates have been fixed at $20 and $30 for over 40 horse power, $25 for over 50 horse power. Fees have been based upon weight at 50 cents per 100 pounds gross weight of vehicle; vehicles of 2,000 pounds or less $15, graduated to over 4,000 pounds at $40. Fees based upon price have been fixed at $10 for list price of $500 or less, plus 75 cents for each additional $500. Many combinations of these various methods of licensing are found in the statutes of different states.

Following are examples of the application of the various forms

of motor vehicle taxation and licensing in effect during the early part of 1922.[1]

In Connecticut, motor vehicles are taxed at 8 cents per cubic inch or fraction thereof of piston replacement besides a gasoline tax. A special tax is imposed upon motor vehicles used as common carriers, the elements making up the tax being seating capacity, horse power, public vehicle tax, and examination fee.

In the District of Columbia, motor vehicles are taxed at a flat rate of $10 per vehicle, with a wheel tax figured on a seat basis, an internal revenue tax of $20 per vehicle, and a hack license fee of $12 per vehicle.

The Illinois fee or tax for 25 horse power or less, is $8; 25 to 35 horse power $12; 36 to 50 horse power $20; over 50 horse power $25; electrics $12. An extra tax for motor vehicles used as common carriers not operating exclusively within a municipality is at the rate of one-fifteenth cent per mile for 12,000 pounds or less gross weight; over 12,000 pounds but not more than 15,000 pounds, one-eighth cent per mile; over 15,000 pounds, one-sixth cent per mile.

In the state of Maine, the fee for motor vehicles used as common carriers is double the normal fee, which is 25 cents per horse power, plus 25 cents per 100 pounds actual weight of car, plus seating capacity multiplied by 150. The cities of Biddeford and Old Orchard also tax automobiles used as common carriers.

The tax is based upon a factory weight plus weight of passengers in Nevada, being 35 cents per 100 pounds factory weight plus weight of passengers at 125 pounds each.

In Pennsylvania, the license fee for motor vehicles in general is 40 cents per horse power (minimum $10). The fee for motor vehicles used as common carriers is the same as for all commercial vehicles, based on bare chassis weight and kind of tires except vehicles of less than 2,000 pounds weight, on which fee is calculated on horse power. Electrics the same as the former. Philadelphia and Reading also exact a license fee from common carriers.

The fee for motor vehicles used as common carriers in Rhode Island is 100 per cent over the normal fee.

[1] Summary of registration, license, and other fees levied by state and local governments on motor vehicles operated as common carriers, issued by American Electric Railway Association, May 1, 1922.

CORRESPONDING REFERENCES.

Public Utilities Reports		Motor Vehicle Transportation
P.U.R.1915C, 853		M. V. T. 286
P.U.R.1915C, 365	(abstract)	M. V. T. 328
P.U.R.1915B, 546		M. V. T. 243
P.U.R.1915C, 853	(abstract)	M. V. T. 292
P.U.R.1915C, 928		M. V. T. 269
P.U.R.1915C, 945		M. V. T. 136
P.U.R.1915D, 621		M. V. T. 167
P.U.R.1915E, 1		M. V. T. 255
P.U.R.1915E, 93		M. V. T. 636
P.U.R.1915E, 177		M. V. T. 648
P.U.R.1915E, 282		M. V. T. 172
P.U.R.1915E, 441		M. V. T. 532
P.U.R.1915E, 642		M. V. T. 261
P.U.R.1915F, 997	(abstract)	M. V. T. 188
P.U.R.1915F, 1012	(abstract)	M. V. T. 189
P.U.R.1916A, 33		M. V. T. 401
P.U.R.1916A, 547		M. V. T. 415
P.U.R.1916A, 825		M. V. T. 510
P.U.R.1916A, 834		M. V. T. 519
P.U.R.1916A, 955		M. V. T. 420
P.U.R.1916B, 820		M. V. T. 424
P.U.R.1916B, 983		M. V. T. 288
P.U.R.1916B, 1067		M. V. T. 433
P.U.R.1916C, 87		M. V. T. 435
P.U.R.1916C, 565		M. V. T. 578
P.U.R.1916D, 1	(abstract)	M. V. T. 401
P.U.R.1916D, 1	(abstract)	M. V. T. 424
P.U.R.1916D, 6	(abstract)	M. V. T. 316
P.U.R.1916D, 6	(abstract)	M. V. T. 474
P.U.R.1916D, 6	(abstract)	M. V. T. 493
P.U.R.1916D, 6	(abstract)	M. V. T. 648
P.U.R.1916D, 7	(abstract)	M. V. T. 303
P.U.R.1916D, 8	(abstract)	M. V. T. 166
P.U.R.1916D, 10		M. V. T. 439
P.U.R.1916D, 18		M. V. T. 474
P.U.R.1916D, 972		M. V. T. 670
P.U.R.1917A, 225		M. V. T. 263
P.U.R.1917A, 700		M. V. T. 446
P.U.R.1917A, 723		M. V. T. 481
P.U.R.1917C, 178		M. V. T. 181
P.U.R.1917C, 627	(abstract)	M. V. T. 490
P.U.R.1917E, 371	(abstract)	M. V. T 491
P.U.R.1917F, 145		M. V. T. 506
P.U.R.1918B, 288		M. V. T. 151

Public Utilities Reports		Motor Vehicle Transportation
P.U.R.1918B, 297		M. V. T. 189
P.U.R.1918C, 318	(abstract)	M. V. T. 414
P.U.R.1918C, 319	(abstract)	M. V. T. 414
P.U.R.1918C, 319	(abstract)	M. V. T. 636
P.U.R.1918C, 319	(abstract)	M. V. T. 662
P.U.R.1918C, 319	(abstract)	M. V. T. 669
P.U.R.1918C, 320	(abstract)	M. V. T. 400
P.U.R.1918C, 320	(abstract)	M. V. T. 433
P.U.R.1918C, 903	(abstract)	M. V. T. 288
P.U.R.1918D, 105	(abstract)	M. V. T. 434
P.U.R.1918E, 782	(abstract)	M. V. T. 221
P.U.R.1918E, 793	(abstract)	M. V. T. 180
P.U.R.1918E, 793	(abstract)	M. V. T. 181
P.U.R.1918E, 793	(abstract)	M. V. T. 215
P.U.R.1918E, 821	(abstract)	M. V. T. 171
P.U.R.1918E, 927		M. V. T. 462
P.U.R.1918F, 677		M. V. T. 328
P.U.R.1919A, 52		M. V. T. 156
P.U.R.1919A, 676	(abstract)	M. V. T. 171
P.U.R.1919B, 101	(abstract)	M. V. T. 608
P.U.R.1919C, 554		M. V. T. 491
P.U.R.1919C, 627		M. V. T. 293
P.U.R.1919C, 700		M. V. T. 598
P.U.R.1919C, 900		M. V. T. 331
P.U.R.1919C, 922	(abstract)	M. V. T. 167
P.U.R.1919C, 922	(abstract)	M. V. T. 378
P.U.R.1919C, 922	(abstract)	M. V. T. 503
P.U.R.1919D, 636		M. V. T. 608
P.U.R.1919D, 936		M. V. T. 383
P.U.R.1919E, 151	(abstract)	M. V. T. 391
P.U.R.1919E, 182		M. V. T. 617
P.U.R.1919E, 196	(abstract)	M. V. T. 635
P.U.R.1919E, 232	(abstract)	M. V. T. 438
P.U.R.1919E, 243	(abstract)	M. V. T. 221
P.U.R.1919E, 660	(abstract)	M. V. T. 509
P.U.R.1919F, 377	(abstract)	M. V. T. 438
P.U.R.1920A, 721		M. V. T. 662
P.U.R.1920A, 863		M. V. T. 391
P.U.R.1920A, 915	(abstract)	M. V. T. 669
P.U.R.1920B, 310		M. V. T. 303
P.U.R.1920B, 325		M. V. T. 353
P.U.R.1920B, 557		M. V. T. 225
P.U.R.1920B, 671		M. V. T. 211
P.U.R.1920C, 194		M. V. T. 494
P.U.R.1920C, 635	(abstract)	M. V. T. 468
P.U.R.1920C, 972		M. V. T. 306
P.U.R.1920D, 229		M. V. T. 310
P.U.R.1920E, 128		M. V. T. 464
P.U.R.1921A, 613		M. V. T. 215
P.U.R.1921A, 747		M. V. T. 218
P.U.R.1921B, 74		M. V. T. 393

Public Utilities Reports		Motor Vehicle Transportation
P.U.R.1921C, 485	(abstract)	M. V. T. 468
P.U.R.1921C, 486		M. V. T. 378
P.U.R.1921C, 628		M. V. T. 496
P.U.R.1921C, 635	(abstract)	M. V. T. 306
P.U.R.1921C, 635	(abstract)	M. V. T. 648
P.U.R.1921C, 636	(abstract)	M. V. T. 464
P.U.R.1921C, 637	(abstract)	M. V. T. 151
P.U.R.1921C, 637	(abstract)	M. V. T. 414
P.U.R.1921C, 714		M. V. T. 469
P.U.R.1921C, 719	(abstract)	M. V. T. 316
P.U.R.1921C, 719	(abstract)	M. V. T. 434
P.U.R.1921C, 719	(abstract)	M. V. T. 598
P.U.R.1921D, 377		M. V. T. 632
P.U.R.1921D, 404		M. V. T. 504
P.U.R.1921D, 486	(abstract)	M. V. T. 503
P.U.R.1921D, 488		M. V. T. 233
P.U.R.1921D, 505		M. V. T. 317
P.U.R.1921D, 684		M. V. T. 222
P.U.R.1921E, 41		M. V. T. 381
P.U.R.1921E, 499		M. V. T. 395
P.U.R.1922A, 592	(abstract)	M. V. T. 155
P.U.R.1922A, 600	(abstract)	M. V. T. 155
P.U.R.1922A, 620	(abstract)	M. V. T. 167
P.U.R.1922A, 620	(abstract)	M. V. T. 171
P.U.R.1922A, 620	(abstract)	M. V. T. 221
P.U.R.1922A, 643	(abstract)	M. V. T. 400
P.U.R.1922A, 857	(abstract)	M. V. T. 171
P.U.R.1922A, 859	(abstract)	M. V. T. 415
P.U.R.1922A, 859	(abstract)	M. V. T. 636
P.U.R.1922B, 57	(abstract)	M. V. T. 268
P.U.R.1922B, 66	(abstract)	M. V. T. 617
P.U.R.1922B, 124	(abstract)	M. V. T. 292
P.U.R.1922B, 193	(abstract)	M. V. T. 151
P.U.R.1922B, 383	(abstract)	M. V. T. 491
P.U.R.1922B, 399	(abstract)	M. V. T. 636
P.U.R.1922B, 406	(abstract)	M. V. T. 292
P.U.R.1922B, 459	(abstract)	M. V. T. 353
P.U.R.1922B, 492	(abstract)	M. V. T. 468
P.U.R.1922B, 705	(abstract)	M. V. T. 221
P.U.R.1922B, 760	(abstract)	M. V. T. 316
P.U.R.1922B, 763	(abstract)	M. V. T. 316
P.U.R.1922B, 764	(abstract)	M. V. T. 155
P.U.R.1922B, 803	(abstract)	M. V. T. 306
P.U.R.1922C, 12	(abstract)	M. V. T. 189
P.U.R.1922C, 12	(abstract)	M. V. T. 215
P.U.R.1922C, 19	(abstract)	M. V. T. 221
P.U.R.1922C, 71	(abstract)	M. V. T. 288
P.U.R.1922C, 131	(abstract)	M. V. T. 260
P.U.R.1922C, 170	(abstract)	M. V. T. 608
P.U.R.1922C, 215	(abstract)	M. V. T. 268

INDEX.

Abandonment, of service, 317, 324; effect of abandonment of route, 635.
Accidents, 317, 323; under state supervision, 15; reports of, 127; indemnity insurance, 532.
Accounting, under state supervision, 15; accounts, reports, and statements, 126; depreciation, 243; duty to keep books of account, 617.
Actions, claims and suits arising from motor vehicle operation, 132.
Adequacy of service, 215, 468.
Advertising, as evidence of public service, 286.
Ambulances, not regulated, 378.
American Electric Railway Association, summary of registration, license, and other fees, 677.
Annulment, delay in operation as not annulling permit, 414; *see also* Revocation.
Appeal and review, 133; provision for, by ordinance, 474; jurisdiction of direct appeal from court order refusing injuncton against jitneys, 519.
Application, for permit generally, 50, 317, 319; preference between applicants, 353; for certificate based upon ordinance, 446.
Arizona, state regulation of motor vehicles, 14; rules and regulations governing stage service, 136, 156; expiration of certificate of convenience and necessity, 151; protection of established stage, 151; speed on highways having heavy grades and sharp curves, 151; admission of competition, 155, 316; through routes, 155; validity of regulatory law, 292; speed regulation, 316.
Arkansas, legality of ordinance, 166.
Assignment, of operative rights, 58, 414, 503, 608; of permit prohibited, 317, 319; effect upon right to operate, 395; improper transfer of permit, 415; new certificate required, 662.
Auction, of local consent not necessary, 424, 446.

Baggage, projection over running board, 156, 165.
Baggage transfer company, allowance for working capital, 263; rates, 263.
Bankruptcy, of street railway caused by competition, 331.
Barnum and Bailey, exhibition of horseless carriage, 7.
Batteries, depreciation of, 263.
Biddeford, municipal license fee, 677.
Bonds, 331, 378; under state supervision, 15; indemnity bonds and insurance to be secured before grant of certificate, 69; security issues by motor vehicle company, 124; operator to furnish bond, 172; cost of, when deposited for security, 243; for indemnity, 303, 631; amount, 331; failure to file, 353; absence of discrimination in requiring, 420; ordinance requiring, 493; requirement of, as exercise of police power, 510; right of municipality to require, 519; ordinance requiring indemnity insurance, 532; validity of ordinance requiring license fee and execution of bond, 578; necessity for, 617.
Brakes, under state supervision, 15; requirements of, 189, 209.
Buildings, depreciation of, 243.
Busses, depreciation of, 263.

California, state regulation of motor vehicles, 14; operation in good faith prior to statute, 167; discontinuance of service, 171; taxicab service, 171; lease of operative right, 171; ordinance constitutional, 172; operator's bond, 172; revocation of certificates, 181; automobile as common carrier, 181, 188; regulatory bodies, 189; approval of security issues, 189; Commission power superseding ordinance, 189; possession of mail contract as reason for certificate, 211; rule relating to detours, 215; combining operative rights, 215; exclusion of competition, 215; depreciation of equipment, 218; valuation of operative rights, 218; return, 218; compensation of drivers, 221; higher rates to discourage short haul traffic, 221; refusal of certificate for illegal operation, 222; speculation in operative rights, 260; transferability of acquired right to operate, 414; competition with railroads, 438; effect of financial ability of operator, 438; admission of competition, 468; assignment of operative rights, 503; what constitutes public necessity, 598; enactment of ordinance, 648; hours of service, 648; new certificate required upon assignment, 662.

Capacity, capacity and loading of cars, 108, 317, 322.

Capital stock, discount on, as no part of rate base, 243.

Carriers, automobiles as common carriers generally, 9, 29, 181, 188, 225; Commission jurisdiction, 269, 648; right of state to define common carriers, 420; separation of jitneys from other vehicles for municipal regulation, 578; distinguishing between, as not improper class legislation, 617; taxicabs, 670.

Cars, classification of, 93.

Certificates of convenience and necessity generally, 378, 401, 662; necessity for generally, 46, 156, 165, 189, 286, 310, 400, 414, 474, 481, 617; applications for, 50; form, 54, 317, 319; scope, 55; limitations, 55, 381; display of certificate, 56; term of certificate, 57; transfer or assignment, 58, 415, 503, 608, 662; suspension, forfeiture, or revocation, 59, 181; grounds for refusing, 80; competition with street railways as ground for refusing, 81; competition with steam railroads as ground for refusing, 88; competition between automobiles as ground for refusing, 89; auto bus service crossing state line, 133, 288, 496; expiration, 151; reasons for denying, 151; distinguished from franchise, 189; possession of mail contract as reason for, 211; adequacy of existing service as reason for refusing, 215; combining operative rights, 215; cost of, as part of rate base, 218; violating law as reason for refusing, 222; necessity for, to transport truck loads, 222; immaterial objections to granting, 233; speculation in, 260; not required for irregular taxicab service, 288; granted only to corporations, 292; issuance to only one applicant, 293; when resulting in monopoly, 303; evidence upon application for, 353; necessity of local consent, 395, 415, 424, 433; delay in operating under, 414; right of state to require, 420; requiring low priced vehicles to secure certificate, 420; competition causing loss to railway, 424; legality of city permit, 424; automobile routes paralleling street railway tracks, 424; regulation on rural state highways, 435; preference in granting, 438; application for, based upon ordinance, 446; granted in New York, 461; competition with lines not under Commission, 462; auto line carrying freight, 464; admission of more convenient

form of transportation, 481; necessity for securing for operation in city, 491; suspension for discontinuance of service, 503; convenience and necessity as prerequisite to granting certificate, 669.
Chains, subject of state supervision, 15; skid chains, 189, 209.
Changes in routes, schedules, and tariffs, 156, 160, 161, 317, 321.
Charter, jitney ordinance authorized by charter, 578; empowering municipality to grant, refuse, or revoke licenses, 636.
Chauffeurs, under state supervision, 15; qualifications of generally, 106, 156, 164; experience for operation on dangerous roads, 151; experience, 172; age and competency, 189, 209; compensation, 221.
Circulars, distribution of, as evidence of public service, 286.
Cities, *see* Municipalities.
Claims, claims and suits arising from motor vehicle operation, 132; notice of, to Commission, 156, 158.
Classification, of cars and service, 93; of transportation, 156, 158; not arbitrary, 172; of vehicles kept for hire, 636.
Class legislation, validity of ordinance, 166; ordinance not constituting, 303; motor vehicle regulation not constituting, 510; distinguishing between carriers as not improper, 617.
Clubs, community auto club as subterfuge, 504.
Colorado, automobiles subject to regulation, 225; materiality of evidence on application for certificate, 233; admission of automobiles to compete with railroads, 233; license fee, 676.
Comfort, health and comfort of passengers, 112; motor vehicle transportation as pleasant mode of travel, 401, 439; admission of more convenient form of transportation, 481.
Commerce, motor vehicle transportation in interstate commerce, 133, 288, 496.
Commissions, for Railroad and Public Service Commissions, *see* Public Service Commissions.
Payment of Commissions, 156, 162.
Common carriers, *see* Carriers.
Compensation, of drivers, 221.
Competition, *see* Monopoly and Competition.
Connecticut, state regulation of motor vehicles, 14; competition with street railways, 151; license fees, 677.
Consent, *see* Local Consent.
Constitutional law, Idaho law declared unconstitutional, 14; jitney ordinance constitutional, 172, 493, 598; constitutionality of statute regulating motor vehicle transportation, 292, 510; right of state to regulate, 420; Commission power to pass upon constitutionality of statutes, 481; validity of ordinance requiring license fee and execution of bond, 578; who may question constitutionality of jitney ordinance, 578; requirement of license fee as not violating constitutional provision relating to occupation taxes, 578; municipal regulation as not violating state's right to regulate, 598; requirement of indemnity bond not depriving of property without due process, 631.
Contingencies, as part of rate base, 243.
Contracts, possession of mail contract as reason for granting certificate, 211, 306; cost of securing contract, 243; operation under private contract, 292, 310, 632; jitney ordinance not impairing, 578.
Control, change in ownership, 156, 163.
Convenience, convenience and necessity as prerequisite to granting certificate, 669.
Corporations, small auto bus lines distinguished from incorporated com-

panies, 494; preferred to individual, 648.
Cost of operation, comparison between railroads and motor trucks, 353. *See also* operating expenses.
Counties, necessity of local consent, 433.
Courts, jurisdiction, 42; appeal and review, 133; injunctions, 133; interference with ordinance, 303; Supreme court jurisdiction of direct appeal from court order refusing injunction against jitneys, 519; power to restrain enforcement of ordinance, 578; revocation of license, 631.
Criminal law, penal provisions affecting motor vehicles, 130, 292; injunction against criminal jitney ordinance, 578; violation of jitney ordinance, 631.
Crossings, stopping before crossing, 631.

Damage, to highways, 233, 268.
Dangerous substances, carriage of, 105, 156, 164.
Definitions, relating to motor vehicle regulation, 26.
Delay, effect of delaying commencement of operation, 414.
Delegation of powers to municipality, 636; legislative power to authorize Commission regulation, 648.
Depots, not required, 353; hotel and depot service, 433, 461.
Depreciation, of automobile equipment, 124, 218, 494; reserves for, 243; of taxicabs and equipment, 243, 255; of furniture and equipment, 255; of property of baggage transfer company, 263.
Detours, rules relating to, 215.
Discarded property, no return upon, 243.
Discontinuance, of service, 317, 324; effect of abandonment of route, 635.
Discount, on capital stock, as no part of rate base, 243.
Discrimination, by automobile operators generally, 125, 292; higher rates to discourage short haul traffic, 221; ordinance not discriminatory, 303; requiring low priced vehicles to secure certificate, 420; ordinance not discriminatory, 493; validity of ordinance requiring indemnity insurance, 532; validity of ordinance requiring license fee and bond, 578; distinguishing between carriers as not improper class legislation, 617; ordinance classifying vehicles, 636; against negroes, 648.
District of Columbia, regulation of motor vehicles, 14; licenses during railway strike, 260; Commission jurisdiction over carriers, 261; taxicab company as a common carrier, 670; license fees, 677.
Drays, rights of common carriers on highways, 636.
Drivers, *see* Chauffeurs.
Due process, validity of statute, 292; ordinance not violating, 493; requirement of indemnity bond not depriving of property without due process, 631.
Duplication, *see* Monopoly and Competition.
Duty, to operate and serve, 99.

Equal protection, ordinance as not denying, 166.
Equipment, equipment of vehicles for which certificates are issued, 66; no return upon discarded, 243; depreciation of, 255, 263; ownership of, 415; cheap second-hand automobiles, 439.
Estoppel, to deny that road is public highway, 133, 608.
Evasion of law, community auto club as subterfuge, 504.
Evidence, materiality of, in application for certificate, 233; necessity of evidence as to public nature of highway, 608; what constitutes public highway, 608.
Exclusive jurisdiction, of Commissions, 189; of municipalities, 189.

Experience, of operators, 172.
Explosives, carriage of, prohibited, 156, 164.

Failure to operate, as ground for revocation of permit, 635.
Fares, *see* Rates.
Federal control, auto truck competition with railroad, 434.
Federal government, no Federal regulation of automobiles, 15; state regulation of routes crossing state line, 133, 288, 496; proposed license fees, 676.
Fees, paid in advance, as affecting working capital, 243; prohibitive license fees, 395; ordinance requiring license fee, 532, 631; validity of ordinance requiring license fee and execution of bond, 578; license fees, 674; imposition by county, 676; on Federal highways, 676; in Connecticut, 677; in the District of Columbia, 677; in Illinois, 677; in Maine, 677; in Nevada, 677; in Pennsylvania, 677; in Rhode Island, 677.
Financial ability, effect upon granting certificate, 438.
Fixtures, depreciation of, 263.
Forfeiture, suspension, forfeiture, or revocation of certificate, 59, 181, 317, 325, 635.
Form, of permit, 54, 317, 319.
Franchises, local franchises, permits, or licenses, 62; as condition precedent to receiving certificate, 62, 189; distinguished from operating certificates, 189; local consent not franchise, 424, 446; operation subject to provisions of, 461.
Free service, prohibition of, 156, 162.
Freight, necessity for permit to carry, 464; freight transportation as public service, 632.
Furniture, depreciation of, 243, 255, 263.

Garage equipment, depreciation of, 263.
Gasoline tax, imposed in Connecticut, 677.
Georgia, state regulation of motor vehicles, 14; Comission jurisdiction, 269; rules and regulations, 285.
Going value, capitalization of losses, 243; of taxicab company, 255.
Good faith, operation in good faith prior to statute, 167, 171, 180, 221, 395, 414, 468.
Good will, not to be capitalized, 243.
Grades, experienced chauffeurs for operation on dangerous roads, 151.

Hackmen, regulation of, 269.
Hackney coaches, rights of common carriers on highways, 636.
Hacks, as public utilities, 292.
Harness, depreciation of, 263.
Health, health and comfort of passengers, 112.
Hearses, not regulated, 378.
Highways, estoppel to deny that road is public highway, 133; experienced chauffeurs for operation on dangerous roads, 151; speed on highways having heavy grades and sharp curves, 151; Commission jurisdiction over private road, 215; detriment to, as reason for refusing certificate, 233; damage to, 268; regulation upon, 269; free to all, 293; regulation of rural state highways, 435; what constitutes public highway, 608; rights of common carriage, 636; taxation to maintain, 675.
Horseless carriage, exhibition of, 17.
Horsepower, as basis of license fee, 676.
Horses, depreciation of, 263; effect of death upon utility valuation, 263.
Hotels, hotel and depot service, 433, 461.
Hours of operation, ordinance prescribing, 532, 636; limitation of, 608.

Idaho, jitney law declared unconstitu-

tional 14; state regulation of motor vehicles, 14.
Identification, signs and marks of, 78.
Illinois, state regulation of motor vehicles, 14, 286; irregular taxicab operation not requiring certificate, 288; certificates only to corporations, 292; monopoly by motor vehicle, 303.
Incorporation, necessity for, 292.
Indemnity, 303; subject under state supervision, 15; indemnity bonds and insurance to be secured before grant of certificate of convenience and necessity, 69; right to require indemnity bond, 510, 519; ordinance requiring indemnity insurance, 532; validity of ordinance requiring license fee and execution of bond, 578; indemnity against negligence, 631; necessity for bond, 617.
Individuals, operation by, 439, 648.
Inflammable articles, carriage of, prohibited, 156, 164.
Injunctions, 133; preventing unlawful operation, 400; against jitney operation, 519; property right entitling company to injunction against jitneys, 519; against criminal jitney ordinance, 578; lack of Commission power to issue, 632.
Inspection, 317, 325.
Insurance, *see also* Indemnity bonds; generally, 156, 157; subject under state supervision, 15; to be secured before grant of certificate of convenience and necessity, 69; premiums paid as affecting working capital, 243; payment in advance, 255.
Interest, as an operating expense, 221.
Interruptions to service, 317, 324.
Interstate commerce, motor vehicle transportation in interstate commerce, 133, 288, 496.
Interurban railways, auto bus line paralleling, 490; improper competition with, 617.
Intoxicating liquor, use of, by operator, 189, 209.
Investment, excessive return upon, 218; working capital on account of cost of bonds deposited as security, 243.
Iowa, state regulation of motor vehicles, 14; regulation by ordinance, 631; revocation of license, 631.
Irregular operation, taxicab service as utility service, 617.

Jitneys, definition of, 510.
Joint rates, through routes and joint rates, 122.
Jurisdiction, of Commissions generally, 35, 249, 648; of courts generally, 42; Commission jurisdiction over rules and regulations, 41; Commission jurisdiction over routes crossing state line, 133, 288, 496; exclusive jurisdiction of Commissions, 189; Commission power superseding ordinance, 189; Commission jurisdiction over carriers in District of Columbia, 261; of Commission over irregular taxicab service, 288; court interference with ordinance, 303; regulation on rural state highway, 435; power of Commission to determine constitutionality of statutes, 481; necessity for application to Commission before operation in city, 491; Commission concern as to management, 503; of municipalities over bonding, 519, 532, 578; lack of power to regulate in Wisconsin, 662; limitation upon power to regulate, 669.

Kansas, ordinances regulating motor vehicles, 268; prohibitive fee, 395.
Kentucky, state regulation of motor vehicles, 14.
Land, exclusion from rate base when unused, 263.
Leases, of right to operate, 171; of equipment, 221.
Legal expenses, as part of rate base, 243.

Legislative grant, to use highways, 636.
Legislative power, municipal regulation as not attempt to exercise, 598.
Legislature, giving force to legislative intent, 395; limitation of right to use highway, 636; power to regulate, 636; delegation of power to municipality, 636; power to authorize Commission regulation, 648.
License fees, *see* Fees.
Licenses, under state supervision, 15; local franchises, permits, or licenses as condition precedent to receiving certificate, 62; ordinance requiring, 303; municipal license to operate as not constituting property, 420; application of statute to operator under prior city license, 420; ordinance requiring license, 519; scope limited, 617; display of license number, 631; revocation of license, 631.
Lights, under state supervision, 15; rules relating to, 189, 208; regulated by ordinance, 631.
Loading, capacity and loading of cars, 108, 317, 322.
Local consent, necessity of, 189, 400, 433; city permit as condition precedent, 424; legality of, 424; not franchise, 424; application for certificate based upon ordinance, 446.
Local service, as warranting through service, 221, 468.

Mail, effect of contract for carrying, 211, 306.
Maine, state regulation of motor vehicles, 14.
Management, extent of Commission concern as to management, 503; limitations upon Commission, 662.
Marks, signs and marks of identification, 78.
Maryland, state regulation of motor vehicles, 14; protection of occupied territory, 306; necessity for certificate of convenience and necessity, 310; rules and regulations governing vehicles, 317, 328.
Massachusetts, state regulation of motor vehicles, 14, 331; motor bus operation by railway, 328; rules and regulations, 331.
Materials and supplies, as part of rate base, 243; working capital of taxicab company, 255; allowance for working capital, 263.
Mississippi, state regulation of motor vehicles, 14.
Monopoly and Competition, arguments against state regulation, 10; arguments in favor of state regulation, 12; competition between motor vehicles generally, 151, 303, 391, 469, 608; competition with street railways generally, 151, 269, 391, 464, 490; through routes, 155; admission of competition generally, 156, 159, 468; possessing mail contract as reason for competing stage, 211; adequacy of existing service, 215; uniform rates under competition, 221; regulation of vehicles competing with railroads or street railways, 225; competition with railroads generally, 233, 268, 438; right of competition, 293; when competition permitted, 316, 353, 446; survival of transportation system best adapted to furnish service, 331; protection of established railway service, 378; possible future competition with railroads, 381; monopoly by street railways, 383; competition as affecting necessity for certificate to operate, 400; effect of slight competition with street railway, 401; application of statute to operator under prior city license, 420; competition causing loss to railway, 424; automobile routes paralleling tracks, 424; limited competition by auto bus, 434; competition with Government controlled railroads, 434; regulation on rural state highways, 435; policy to protect existing public utility, 439; lines not under Commission jurisdiction, 462; through

service when local service is adequate, 464; admission of more convenient form of transportation, 481; lack of Commission power to prevent competition, 506; maintenance of uniform rates, 506; ordinance permitting monopoly, 532; possible creation of monopoly by ordinance, 578; unlawful monopoly not created by ordinance, 598; unfair practices, 617.

Motor Vehicle Conference Committee, pamphlet on state regulation of motor vehicle common carriers, 9.

Municipalities, powers of, 42; validity of ordinance, 172, 303, 598, 631; jurisdiction limited, 189; necessity local consent, 395, 424, 433, 491; necessity of consent to operate between, 400; operation between city and village, 415; application of statute to operator under prior city license, 420; auction of local consent not necessary, 424, 446; jurisdiction over route partly within and partly outside of city 424, 435; municipal power to regulate generally, 493, 519; separation of jitneys from other vehicles for municipal regulation, 578; jitney ordinance authorized by charter, 578; municipal regulation as not violating state's right to regulate, 598; scope of license limited, 617; implied grant of right to use streets, 636; enactment of ordinance regulating jitneys as superseding Commission powers, 648.

Nebraska, state regulation of motor vehicles, 14; distinguishing between carriers as not improper class legislation, 617.

Necessity, 446; what constitutes, 233, 598; convenience and necessity as prerequisite to granting certificate, 669.

Negroes, discrimination against, 648.

Nevada, state regulation of motor vehicles, 14; grounds for refusing certificate, 353; bonds and schedules, 378; protection of established railway, 378.

New Hampshire, state regulation of motor vehicles, 14; protection of established railway, 383; competition between automobiles and railways, 391; protection of jitney operators from competition, 391.

New Jersey, state regulation of motor vehicles, 14; auto service company not regulated, 393; jurisdiction of Commission, 395; local consent to operation, 395.

New York, state regulation of motor vehicles, 14; certificate for route crossing state line, 288; necessity for certificate to operate, 400; necessity of local consent, 415, 424, 433; application of statute to operator under prior city license, 420; requiring low priced vehicles to secure certificate, 420; jurisdiction over route partly within and partly outside of city, 424, 435; local consent not franchise, 424; hotel and depot service, 433; policy to protect existing public utility, 439; use of second-hand automobiles, 439; when competition justified, 446; certificates of convenience and necessity granted, 461; competition with lines not under Commission, 462; necessity for certificate to carry freight, 464; statutes governing competition with electric railways, 464; competition between bus lines, 469.

Notes receivable, as affecting working capital, 243.

Notice, of claims and suits, 156, 158; changes in schedules, 156, 160, 161; immateriality of insufficient notice, 401.

Nuisance, illegal jitney operation, 519.

Occupation tax, requirement of license fee as not violating constitutional

provision relating to occupation taxes, 578.
Occupied territory, protection against competition, 151, 155, 306, 353, 391, 446, 509; admission of more convenient form of transportation, 481.
Officers, unpaid salary as going value, 255.
Ohio, state regulation of motor vehicles, 14.
Oklahoma, state regulation of motor vehicles, 14.
Old Orchard, municipal license fee, 677.
Omissions from inventory, as part of rate base, 243.
Omnibuses, rights of common carriers on highways, 636.
Operating expenses, depreciation of motor vehicles and equipment, 124, 218, 243, 255, 263, 494; exclusion of interest, 221.
Operation, of cars, 97; reckless or unsafe, 317, 325; operation and construction distinguished, 617.
Operation in good faith, prior to statute, 167, 171, 180, 221, 395, 414, 468.
Operative rights, valuation of, 218; transfer of, 414, 415, 503, 608, 662.
Operators, qualifications of, 106, 151, 156, 164, 172, 189, 209.
Ordinances, 303; regulating motor vehicles, 9, 268; validity of, 166, 493, 519, 598, 631; requiring bond, 166; conflict with Commission power, 189; application for certificate based upon ordinance, 446; operation subject to provisions of, 461; enactment without referendum, 474; requiring certificate from commissioner of public utilities, 474; requiring operator to procure licenses and execute bonds, 519; confining jitneys to selected routes and termini, 532; prescribing hours of operation, 532, 648; requiring indemnity insurance, 532; who may attack, 532, 578; injunction against criminal jitney ordinance, 578; jitney ordinance authorized by charter, 578; validity of, requiring license fee and execution of bond, 578; municipal regulation as not violating state's right to regulate, 598; enactment of ordinance regulating jitneys as superseding Commission powers, 648.
Oregon, state regulation of motor vehicles, 14; emergency ordinance without referendum, 474.
Organization expenses, as part of rate base, 243.
Overcrowding, 156, 164, 210, 631.
Overheads, 243, 255, 263.
Ownership, of cars, 97; change in, 156, 163; of equipment, 415.

Parties, who may attack ordinance, 532, 578.
Partners, transfer of permit, 415.
Passengers, health and comfort of, 112; overcrowding, 136, 156 164; number of as affecting amount of bonds, 331.
Payment, conditions of, as affecting working capital, 243.
Penalties, subject under state supervision, 15; penal provisions affecting motor vehicles, 130, 317, 327, 400.
Pennsylvania, automobiles subject to jurisdiction, 474; admission of more convenient form of transportation, 481; Commission power to pass upon constitutionality of statutes, 481; necessity for certificate to operate in city, 491; municipal power to regulate, 493; return allowed motor bus operator, 494; small auto bus lines distinguished from incorporated companies, 494; regulation of routes crossing state line, 496; extent of Commission concern as to management, 503; community auto club as subterfuge, 504.
Permit, *see* certificates of convenience and necessity; local consents.

Philadelphia, municipal license fee, 677.
Philippine Islands, lack of Commission power to prevent competition, 506.
Piston replacement, as basis of license fees, 677.
Police power, to regulate jitneys, 172; right to require bond, 510; jitney ordinance authorized by charter, 578.
Preference, between applicants for certificates, 353, 438, 468.
Premiums, payment of, as affecting working capital, 243.
Price of vehicle, as basis of license fee, 676.
Private roads, no Commision jurisdiction over, 215.
Procedure, who may complain against ordinance, 532, 578.
Property, municipal right to operate as not constituting property, 420; unused property excluded from rate base, 263.
Publication, of notice of hearing, 401.
Public Service Commissions, assumption of power over public utilities, 8; jurisdiction generally, 35; jurisdiction over rules and regulations, 41; appeal and review, 133; rules and regulations of Arizona Commission, 136; jurisdiction limited, 189, 669; necessity for approval of through service, 215; jurisdiction over private road, 215; jurisdiction over carriers, 261, 269, 331, 474; taxicabs not operating over specified routes, 288; power to authorize monopoly, 303; jurisdiction of New Jersey Commission, 395; jurisdiction over route partly within and partly outside of city, 424; regulation on rural state highways, 435; competition with lines not under, 462; power to pass upon constitutionality of statutes, 481; regulation of routes crossing state line, 133, 496; extent of Commission concern as to management, 503; lack of Commission power to prevent competition, 506; necessity of evidence as to public nature of highway, 608; lack of power to enjoin operation, 632; jurisdiction over motor transportation, 648; enactment of ordinance regulating jitneys as superseding Commission powers, 648; lack of power to regulate, 662; jurisdiction over taxicabs, 670.
Public utilities, automobile transportation as public service, 8, 29; what constitutes generally, 181, 188, 261, 286, 292, 310, 393, 617; automobiles subject to regulation, 225; regulation of automobiles, 474; individuals operating automobiles, 481; municipal power to regulate, 493; small auto bus lines distinguished from incorporated companies, 494; taxicab service as utility service, 617; auto freight line as public utility, 632; jurisdiction over motor transportation, 648; taxicab company as, 670.
Public welfare, as reason for regulation, 268.
Purchaser, rights of purchaser of stage line, 180.

Railroads, automobile competition, 13. 225, 233, 378, 434, 438, 490; motor bus operation by, 96; adequacy of existing service, 268; speed of auto when approaching, 316; request of Federal authorities that trucks relieve railroads, 353, hotel and railroad service, 433, 461. statutes governing competition with electric railways, 464; property right entitling company to injunction against jitneys, 519; distinguishing between carriers as not improper class legislation, 617.
Railways, improper competition with, 617.
Rates, generally, 317, 320; subject to state supervision, 15; schedules, 116, 150, 161; changes in, 122, 156,

161; through routes and joint rates, 122; discrimination by automobile operators, 125, 292; justification of increase, 156, 162; rules governing, 189, 206; higher rates to discourage short haul traffic, 221; basis for rates, 243; baggage transfer company, 263; fixed by ordinance, 303; amount as affecting granting of certificates, 415, 438; requiring low priced vehicles to secure certificate, 420; hotel and railroad service, 461; ordinance regulating, 493; return allowed from motor bus rates, 494; uniform under competitive conditions, 506; ordinance fixing rates as not arbitrary or discriminatory, 636.
Reading, municipal license fee, 677.
Rebates, subject under state supervision, 15; prohibition of, 156, 162.
Records, accounts, reports, and statements, 126; duty to keep books of account, 617.
Reduced rates, prohibition of, 156, 162.
Reports under state supervision, 15; accounts, reports, and statements, 126; of accidents, 127; Commission power to require filing, 189; annual reports, 317, 326.
Reproduction cost less depreciation, as measure of value, 243.
Reserve equipment, 317, 324.
Reserves, reinvestment of, 243.
Restraint of trade, validity of ordinance, 166.
Return, 608; return for automobile operation, 113; excessive return on investment, 218; reasonableness of, 243; right of utility to earn, 306; amount allowed a motor bus operator, 494.
Revenues, effect of competition upon, 481.
Revocation, suspension, forfeiture, or revocation of certificate of convenience and necessity, 59, 181, 317, 325; of license, 631; for failure to operate, 635.
Rhode Island, state regulation of motor vehicles, 14; license fee, 677.
Right of way, of interurban cars, 617.
Roads, *see* Highways.
Routes, 317, 320; under state supervision, 15; motor vehicle routes, 114; through routes and joint rates, 122, 155, 461; regulation of routes crossing state line, 133, 496; regularity, 261; distance fixed by ordinance, 303; paralleling street railway tracks, 401; partly within and partly without city, 424, 435; ordinance regulating, 493, 636; confining jitneys to selected routes and termini, 532; effect of abandonment of, 635.
Rules and regulations, Commission jurisdiction over rules and regulations, 41; governing stage service, 136; governing rates, time schedules, bonds, and operation, 189; detours, 215; of Georgia Commission, 285; of Maryland Commission, 317, 328; enforcement, 331; of Massachusetts Commission, 331; validity of, 631.
Running board, baggage on, 156, 165, 189, 211.
Rush hours, service during, 391.

Safety, of operation, 100, 136, 331; rules and regulations, 189, 208.
Salaries, unpaid, as going value, 255.
Sanitation, subject under state supervision, 15
Schedules, 156, 159, 317, 320, 378; under state supervision, 15; rates and schedules, 116; time schedules, 120; changes in rates, schedules, tariffs, or service, 122; notice of changes, 156, 160; disregarding schedules, 171; duty to observe, 181; of operation, 331; arrangement to prevent unfair competition, 469.
Seating capacity, *see also* Overloading; licenses varying according to, 303, 677.
Second-hand equipment, 439.

Security issues, under state supervision, 15; by motor vehicle company, 124; commission approval of, 189.
Selden, first test of internal combustion engine, 7.
Service, under state supervision, 15; classification of, 93; duty to operate and serve, 99; changes in service, 122; rules and regulations governing stage service, 136; notice of changes, 156, 160; illegal discontinuance, 171; obligation to carry passengers, 189, 210; through service, 215; abandonment of, 317, 324; impaired by competition, 331; sufficiency of, 391; character of, as affecting competition, 438; comparison of auto bus and railway, 439; admission of competition dependent upon, 439; adequacy of street railway service, 446; effect of inadequacy, 490; arbitrary discontinuance, 503; hours of operation, 532, 608, 636; regulation by ordinance, 636.
Service cars, not regulated, 393.
Sharp curves, experienced chauffeurs for operation on dangerous roads, 151; speed on highways having sharp curves, 151.
Short haul traffic, higher rates to discourage short haul traffic, 221; obsolete character of railroad equipment, 353.
Signature, necessity for, upon assignment of operative rights, 503.
Signs, signs and marks of identification, 78; destination signs, 317, 320.
Speculation, in certificates of convenience and necessity, 260.
Speed, 316; under state supervision, 15; rate of speed, 136; on highways having heavy grades and sharp curves, 151.
Speedometers, 189, 208.
State, arguments for and against state regulation, 10; municipal regulation as not violating state's right to regulate, 598; power to regulate, 636; regulation of routes crossing state line, 133, 288, 496.
Statements, accounts, reports, and statements, 126.
Stations, 353; hotel and depot service, 433, 461.
Statutes, operation prior to, 167, 171, 180, 221, 395, 414, 468; validity of, 292; application of statute to operator under prior city license, 420; governing competition with electric railways, 464; automobiles subject to jurisdiction, 474; Commission power to pass upon constitutionality of statutes, 481; constitutionality of motor vehicle regulation, 510; providing for jitney regulation, 521; construction, 617.
Steam railroads, *see* Railroads.
Stocks, security issues by motor vehicle company, 124.
Street railways, *see also* Railroads; motor vehicle competition generally, 13, 269; competition with, as ground for refusing certificate of convenience and necessity, 81; regulation of vehicles competing with, 225; licensing automobiles during strike, 260; operation of motor vehicles, 328, 331; effect of jitney competition, 331, 481; protection against competition, 383; effect of slight competition with street railway, 401; when competition permitted, 401, 446; competition causing loss to railway, 424; automobile routes, paralleling tracks, 424; limited competition by auto bus, 434; protection from competition, 439, 491; admission of more convenient form of transportation, 481; property right entitling company to injunction against jitneys, 519; separation of jitneys from other vehicles for municipal regulation, 578; ordinance favoring, 578; unlawful monopoly not created by ordinance, 598; limitation of right

to use highway, 636; implied grant of right to use streets, 636.
Strikes, licensing motor vehicles during, 260, 328.
Substitute motor vehicles, 317, 323.
Suits, claims and suits arising from motor vehicle operation, 132; notice of, to Commission, 156, 158.
Supervisory powers, of Wisconsin Commission, 662.
Supplies, as part of rate base, 243; working capital of taxicab company, 255; allowance for working capital, 263.
Surety company, bond to be secured from, 172.
Suspension, forfeiture, or revocation of certificate, 59, 181, 317, 325; of license, 631.

Taxation, taxation and licensing of motor vehicles, 674.
Taxes, nonpayment of, as reason for refusing certificate, 233; as affecting working capital, 255; absence of discrimination in requiring, 420.
Taxicabs, valuation of, 243; as subject to regulation, 16; taxicab service, 93; what constitutes taxicab service, 171; depreciation of, 243; depreciation of equipment, 255; going value of company, 255; valuation of property, 255; working capital of, 255; working capital to cover insurance premium, 255; regulation of, 269; not required to obtain certificate, 288; as public utility, 292; not regulated, 378; hotel and depot service, 433, 461; ordinance not discriminatory, 493; extent of Commission concern as to management, 503; protection against competition, 509; separation of jitneys from other vehicles for municipal regulation, 578; taxicab service as utility service, 617; rights of common carriers on highways, 636; as common carriers, 670.
Tennessee, state regulation of motor vehicles, 14; constitutional regulation of motor vehicles, 510; definition of jitneys, 510; municipal right to regulate by ordinance, 519; statutes providing for jitney regulation, 521.
Term, of certificate of convenience and necessity, 57.
Texas, ordinance requiring license fee, 532; injunction against criminal jitney ordinance, 578; requirement of license fee as not violating constitutional provision relating to occupation taxes, 578; validity of jitney ordinance, 598; unlawful monopoly not created by ordinance, 598.
Through routes, 461, 468; through routes and joint rates, 122; operation in good faith, 171; combining operative rights for, 215; limited to through passengers, 424; when local service is adequate, 464; not authorized by local service in existence, 468.
Tickets, under state supervision, 15; use of, 119; issuance of, 189, 208.
Time, time schedules, 120; expiration of certificates of convenience and necessity, 151; disregarding schedules, 171; rules governing schedules, 189, 207.
Tires, carrying extra tires, 189, 209.
Tobacco, use of, by operators, 189, 209.
Touring cars, as a regular means of transportation, 439.
Towns, *see* Municipalities.
Trackless trolley, 331.
Tracks, stopping before crossing, 631.
Trailers, use of, 105; prohibited, 156, 164; when permitted, 189, 211; prohibited by ordinance, 631.
Transfer, of certificate of convenience and necessity, 58; of permit prohibited, 317, 319; effect of transfer upon right to operate, 395; of operative rights, 414, 503, 608; improper transfer of permit, 415; new certificate required upon assignment, 662.

Trucks, necessity of certificate for transportation by, 222; depreciation of, 263; damage to roads, 268.

Unfair competition, arrangement of schedules to avoid, 469; unfair practices, 617.
Uniform rates, under competitive conditions, 221.
Unused property, exclusion from rate base, 263.
Utah, state regulation of motor vehicles, 14; protection against competition, 509; assignment of operative rights, 608; what constitutes public highway, 608; freight transportation under contract as public service, 632; lack of Commission power to enjoin operation, 632; corporation preferred to individual, 648.

Valuation, of motor vehicle property, 126; of operative rights, 218; of taxicab equipment, 243, 255; of baggage transfer equipment, 263.
Villages, *see* Municipalities.
Violation of law, as reason for refusing certificate, 222, 353.
Virginia, state regulation of motor vehicles, 14.

Wagons, depreciation of, 263.
Weight, of property to be carried, 136; as basis of license fee, 676.
West Virginia, state regulation of motor vehicles, 14; rights of common carriers on highways, 636; Commission jurisdiction, 648.
Wisconsin, state regulation of motor vehicles, 14; lack of Commission power to regulate, 662; limitations on Commission power to regulate, 669.
Working capital, of taxicab company, 243, 255; insurance, licenses, taxes, and cash included, 255; of baggage transfer company, 263.

STANFORD UNIVERSITY LAW LIBRARY

CN AST LGm
Motor vehicle transportation
Stanford Law Library

3 6105 044 188 899